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THE AMERICAN LAW REGISTER.

JUNE 1873.

THE LAW OF RELIGIOUS SOCIETIES AND CHURCH CORPORATIONS.

CHAPTER II.

THE DIFFERENT FORMS OF CHURCH ORGANIZATIONS—THESE OFTEN DETERMINE THE LAW APPLICABLE TO QUESTIONS ARISING OUT OF CHURCH CONTROVERSIES—ECCLESIASTICAL MODES OF ORGANIZING RELIGIOUS SOCIETIES—LEGAL MODES AND REQUISITES.

It is by no means proposed to enter into a statement, much less a discussion, of the *doctrines* of the various religious denominations, nor of the details of different forms of church government. As these often require an examination of many volumes relating to any one denomination, it is manifestly better to *refer* to original authoritative theological works, than to attempt any condensation of them, which might rather mislead than enlighten with sufficient precision for legal purposes. These originals indeed require so much research and study, that a prudent writer would not, unnecessarily,

“Rush in where angels fear to tread.”

Courts, lawyers, theologians and laymen are frequently called on to consider the legal rights, powers and duties of different churches, and to arrange or consider church titles, contracts, rights and remedies for religious societies, their pastors, officers, agents and members. These often depend on religious tenets and forms of church government. It is proper therefore to give some general classification of the forms of church government,

with annotated references to the sources³³ of complete and authentic information as to these, and the doctrines of religious faith and practice.

It may be said in general terms that there are TWO PRINCIPAL FORMS OF CHURCH GOVERNMENT—to wit :

First. "INDEPENDENT," or, as it is more frequently called, "CONGREGATIONAL;" and

Second. "ASSOCIATED."³⁴

This latter may be said in general terms to be subdivided into—*first*, "EPISCOPAL," and *second*, "PRESBYTERIAL."

There are, however, modifications and different shades of each of these, according to the policy and peculiar views of different religious denominations. There are associated societies which are neither episcopal nor presbyterial.³⁵ It is necessary to under-

³³ As to the value of historical, biographical and other books in evidence, see 1 Greenleaf's Ev., § 8, 497; *Morris v. Lessee of Harmer*, 7 Peters 554. In *Harrison v. Hoyle*, now in Supreme Court of Ohio, it was argued that reports of church trials in ecclesiastical judicatories and judicial courts were competent evidence to be considered. See *Kniskern v. Lutheran Ch.*, 1 Sandf. Ch. 439; *U. S. v. Bales Cotton*, 1 Am. Law Record 93, Aug. 1872, U. S. Cir. Ct. E. Dist. Tenn.

The most valuable history of the Early Christian Church is "Origines Ecclesiasticæ, or the Antiquities of the Christian Church, by Rev. Joseph Bingham, M. A., 9 vols. 1845."

³⁴ In Ohio the Acts of March 12th 1844 (2 Curwen 1056), amended February 18th 1848 (Id. 1408) and March 22d 1851 (Id. 1668), are designed, as the title of each indicates, to provide for the incorporation and appointment of trustees "of associated religious societies."

These different forms of church government are uniformly recognised by courts: *Brooks v. Shacklet*, 13 Gratt. 301; *Venable v. Coffman*, 2 W. Va.; *Watson v. Jones*, 13 Wallace; *Gibson v. Armstrong*, 7 B. Monroe 481; *Shannon v. Frost*, 3 Id. 258.

³⁵ The church government of the Society of Friends is associated, but neither episcopal nor presbyterial. The Friends exist in Great Britain and the United States. In the society there are nine "yearly meetings," embracing particular districts. One includes London and Dublin, one Pennsylvania and New Jersey, one Ohio, &c. The yearly meeting has exclusively the legislative power in its district. For doctrines and church government, see George Fox's Journal, Barclay's Apology, Barclay's Catechism, Barclay's Treatise on Church Government, Phipps on the Original and Present State of Man, Selections from the Writings of Isaac Pennington, William Penn's Rise and Progress of the People called Quakers, The Ancient Testimony of the Religious Society of Friends, revived and given forth by the Yearly Meeting held in Philadelphia in the Fourth Month 1843. And the works contained in the various volumes of the "Friends' Library." In this periodical have been published the following works, viz.: A Sketch of the Institution of the Discipline in the Society; No Cross, no Crown, by William Penn; the Lives of William Dewsbury, William Penn, George Whitehead,

stand something of these in order to secure a proper church organization, to prepare title-papers for church property, to carry out the views of those who may grant property for church purposes, and to conform generally to the peculiar policy of each religious denomination.

The "Independent" or "Congregational" form of church government is adopted by those Protestants who maintain "that each particular church or congregation is authorized by Christ to exercise all the acts of ecclesiastical power and privilege within itself, without being subject to the jurisdiction or control of any bishop [convention, conference, general assembly], synod, presbytery or council composed of delegates from different associated churches."

This form of government is "predicated entirely upon the order and constitution of" the churches which adopt it, "and not upon any peculiar system of doctrines set forth in a public standard, which their ministers or members are required to subscribe; they are not properly to be considered as a religious *sect*, for the principles of Congregational church government are adopted by different sects, especially the Baptists. Indeed, the very genius of the Congregational policy is to exclude separate sects and communions from the Christian world, inasmuch as it disclaims any symbol or formula of doctrine, or order establishing an ecclesiastical uniformity, and admits the Bible only as the great bond of unity among Christians."—*Buek* 88.

It must not be understood, however, that Congregational churches have no general ecclesiastical bodies composed of representatives of Independent churches.

The several religious denominations adopting the Independent form of government are respectively composed of congregations recognising substantially the same religious principles, and these have synods, conventions, associations, councils and other ecclesiastical bodies composed of representatives of congregations. But the action of such ecclesiastical bodies is *advisory* merely, not *authoritative*.³⁶

John Woolman, John Churchman, William Edmundson, Thomas Chalkley, Thomas Shillitoe, Daniel Wheeler and many other eminent members and ministers of the Religious Society of Friends; Bowden's Hist. Book of Meetings; Foster's Rep.; Sewell's Hist. Quakers. For doctrines peculiar to Hicksites, see Sermons of Elias Hicks, &c.

³⁶ "The above are the peculiar distinguishing characteristics of Congregationalism, especially as it exists in the United States. The reader who is desirous of

The religious congregations which adopt the Independent form of church government generally recognise some standard of faith or creed, but not one which is *unchangeable*. Some congregations may be so constituted as to have defined articles of religion, with

seeing a more extended view of the arguments employed in support of this peculiar polity of church government, is referred to the following works: Owen on the Nature of a Gospel Church and its Government; Goodwin's Constitution, Rights, Order and Government of the Churches of Christ; Watt's Rational Foundation of a Christian Church; Glass's Works, vol. i.; Carson's Letters in Answer to Brown; ditto on Independency; Haldane's View of Social Worship; Mather's Magnalia, vol. ii.; Mather on the Nature, Grounds, Antiquity and Advantages of Congregational Churches; Wise's Vindication; Brysen's Compendious View; Colton's Power of the Keys; Turner's Compendium of Social Religion; Fuller's Remarks on the Discipline of the Primitive Churches; Buck 92, title Congregationalists; Dr. Dexter on Congregationalism; Punchard on Congregationalism; Fuller's Church History of England, B. 9, p. 166; Strype's Life of Parker, p. 326; Neale's History of the Puritans, vol. i., p. 375; Mosheim's Eccl. History, vol. iv., p. 98; Hornbeck's History of Brownism;" Buck 53, title Brownists; see titles Church, Episcopacy, Independents. For an excellent condensation of creeds and forms of church government, see Tyler Ecc. L., ch. 53, § 827, &c. For authoritative works on these subjects, see Buck Ecc. L., Mass. 77-104, &c.

Among the religious denominations which adopt the Congregational or Independent form of church government, are the Congregationalists proper, the several Lutheran organizations, the regular Baptists and the nine other bodies known as Seventh-day Baptists, Free Will Baptists, Anti-Mission Baptists, the General or Six Principle Baptists, the Tunkers, the Menonites, the Christian Connection, the Disciples (formerly called Christian Baptists: see 8 B. Monroe 70, 7 Dana 195, and now the Christian Church or Campbellites), and the Winebrennarians or Church of God: *Winebrenner v. Colder*, 43 Penna. St. 244. Also, the Unitarians, the Shakers, Swedenborgians, Adventists, Universalists, Spiritualists, Jews and Congregational Methodists: Tyler Eccl. L., ch. lxiii.

Some of the Baptist churches have an association with only *advisory* jurisdiction to which an appeal is made, leaving each congregation independent and supreme: *Baptist Church v. Witherell*, 3 Paige 296.

An interesting case, *Gilthorpe et al. v. Hall et al.*, was decided in the Circuit Court of Brooke county, West Va., December 1872, by Judge THOMAS W. HARRISON, relating to the church government of the Disciples (Campbellite) denomination. A lot had been conveyed to trustees for the use of a congregation of the Disciples' Church. In August 1871 the congregation, by a vote of about 76 for to 26 against, employed a pastor. Some of the dissatisfied parties were soon after tried before and expelled by elders of the church, and a subsequent vote of the church members sanctioned their action. Other members withdrew, and uniting with still others organized a church. An elder and deacon and other members of this new congregation applied to four sister churches to appoint a committee to hear an appeal from the order of expulsion, and to hear and decide on the difficulties which resulted in the division of the church. The committee justified the withdrawal and declared that the "withdrawing brethren legitimately represented the church in Wellsburg, and deserved the fellowship and regard of all the brethren."

property held for those *who adhere to them*, unchangeable entirely or in part by the action of any church authority.

Those representing the original organization filed a bill to enjoin the new organization from taking possession of the church. Near 1400 MSS. legal cap pages of evidence were taken on the disputed points, whether the elders could try the questions in which they were alleged to be interested, and whether the church usage gave an appeal, and as to its effect. The court determined, as facts proved, that the congregation was independent; that there was in this church no appeal; that the action of the committee, not having been authorized by the original congregation, was not binding; that the old organization was the Disciples Church for the purpose of the trust-deed, and could only cease to be so by ceasing to maintain the doctrine and practice of that religious denomination. The case was argued with great ability by Hon. C. W. B. ALLISON for the old, and by JOSEPH S. PENDLETON for the new organization.

The weight of evidence was, that the effective and final action in matters of discipline is by the vote of the congregation on the report of the elders who first try charges. President PENDLETON, of Bethany College, eminent in this church, testified, as his opinion, that the elders finally try and decide without any action of the congregation. This church has no written discipline. The New Testament and evidence of usage determine its internal policy.

As to Disciples' Church, see for *History*—"Memoirs of A. Campbell, by R. Richardson:" For *Doctrine*—Christian Baptists, Christian System, Christian Baptism: all by Alex. Campbell; Organon of Scripture, by J. S. Lamar; The Messiahship, or Great Demonstration, by Walter Scott; A Scriptural View of the Office of the Holy Spirit, by R. Richardson; The Living Pulpit of the Christian Church, by W. T. Moore; Reason and Revelation and Scheme of Redemption, by R. Milligan; Talks to Bereans and Walk about Jerusalem, by Isaac Errett; Encyclopedia of Religious Knowledge, art. "Disciples of Christ."

This church has no book of discipline or church government other than the New Testament.

Buck says: "The principal churches at the present day, organized on the Congregational plan, are to be found among the Dissenters of Great Britain, and in the New England States in America," p. 88. But now this form of church organization is found in all parts of the United States.

As to the Baptists of the United States it is said: "Their mode of church government is similar to that of the Congregationalists of New England, and to the Independents of Great Britain. The officers which usually belong to a church consist of a pastor and from two to seven or nine deacons, according to the magnitude of the church and its exigencies. Their ministers and pastors are ordained with the imposition of hands by a presbytery (a council of advisory delegates), consisting of any number more than two. Every candidate for ordination, however, must be presented, previously approved, by the church of which he is a member. All candidates for baptism are required to make a public declaration of their faith and religious experience, either before the church and congregation together, or else in the presence of such members of the church as may have been especially appointed for such purpose. In the transaction of business, both secular and spiritual, it is customary for all the members, male and female, to assemble, appoint a chairman, have a clerk to keep a regular record of the pro-

But generally property is held by or for each congregation, subject to its right to control it, and change the doctrines for the

ceedings, and to allow a free discussion and vote to every member present on the subject."—Buck's App. iv. 469.

In the regular Baptist Church, among the authoritative works are: *On church government*—"Congregationalism, by Henry M. Dexter; Boston: Nichols & Noyes, 1865;" "Church Polity, by Henry J. Ripley; Boston: Growes & Young, 1867;" "Baptist Church Directory; E. T. Hiscox, D.D."

On Baptist *doctrines*—See "New Hampshire Confession of Faith," or "Confession of Faith, Baptist Publication Society, Philadelphia;" "Principles and Practices of Baptist Churches, by Francis Wayland; N. Y., Boston, Chicago, 1857;" "Theology, by E. G. Robinson, D. D., Prof. of Rochester Theological Seminary."

"The government of the Evangelical Lutheran Church in the United States, in its essential features, is Congregational or Independent. Each congregation has a church council, consisting of elders and wardens (or deacons). They are elected by the people. Their term of service varies in different churches. They superintend the affairs of the church, assist in the service, and manage the pecuniary concerns. They are the agents of the people. Every pastor is the bishop of his church. No episcopacy is acknowledged but parochial. The parity of the clergy is strictly maintained. There are district synods which are composed of the minister of a particular district and a lay representative from each pastoral charge. These synods meet annually; they attend to whatever business concerning the churches in their bounds is brought before them; they assume and assert no power but that which is *advisory*. The licensure of candidates, their ordination, the suspension or excommunication of ministers, are matters that are transacted by the clergy alone, who meet in a ministerium after the synodical business is finished.

The connection between a pastor and his flock is entirely voluntary, with which the synods and ministeriums have nothing to do. They can neither create nor dissolve it. In this, as in other cases, if consulted, they can give their counsel."—Buck's Theo. Dic., App. v. 471; *Heckman v. Mees*, 16 Ohio 538.

The evangelical Lutheran congregations generally adopt more or less of the Augsburg Confession for their doctrine. This was prepared at the instance of Charles V., Emperor of Germany, and presented to him, and over two hundred princes and divines assembled at the Diet of Augsburg, June 25th 1530. It differs from other Confessions in this important respect, that it was not designed by the Reformers as a creed for the church, but simply as an expression of their individual faith on those topics which were at issue between them and the papacy. But it has been confessed and adopted more than three centuries as the symbol of the Protestant church, either in a modified or absolute form or sense. See "Elements of Popular Theology, by S. S. Smucker, D. D., Philadelphia, 1845."

There are five distinct classes or bodies of Lutherans in this country, each differing from the others more or less in their doctrinal basis. The highest *advisory* body representing these classes respectively are: *First*, The General Synod, subordinate to which are 21 district synods, 1150 churches, 665 ministers and 103,320 members, with three colleges and three theological seminaries. *Second*, The General Council in America, subordinate to which are 10 synods, 872 churches and 138,117 members. *Third*, The Synodical Conference of North America, with 6 synods and 191,134 members. *Fourth*, The Southern General

propagation of which it is designed to be used according to its policy or usage.

Synod, with 5 district synods, 169 churches and 11,844 members. There is still another class with 9 independent synods, with 529 churches and 42,780 members. As to all these, and especially the churches under the general synod, see Schmucker's *Popular Theology*; Schmucker's *Lutheran Manual*; Dr. Hazelin's *Hist. Evang. Luth. Church in U. S.*; Kurtz's *Hist. of Church in Germany*; Appleton's *Am. Encyc.*, "Lutheran Church;" General *Hist. of Christian Religion and Church*, by John August Wilhelm Neander. Also *Hist.* by John Laurence Von Mosheim, D. D., and by James Murdock: "The Conservative Reformation and its Theology," by C. P. Krauth, D. D.

For generally received creed and form of church government in Evangelical Lutheran Church, see *Book of Worship*, published by the General Synod of the Lutheran Church in the United States, 1872, with formula for the government and discipline of the Evangelical Lutheran Church. Also definite platforms, doctrinal and disciplinarian, for Evang. Luth. district synods, constructed in accordance with the principles of the General Synod, Philadelphia, 1855.

See "An act to incorporate the Evangelical Lutheran Synod of Ohio and adjacent states," passed March 23d 1849: 47 Ohio Local Laws 282; "An act to incorporate the German United Evangelical Synod of America," passed February 18th 1848: 46 Local Laws 180.

The Congregationalists proper, generally approve if they do not adopt, as their creed, the "Saybrook Articles," or "The Boston Confession of 1680, unanimously commended as the public expression of the faith of the churches of Connecticut, assembled at Saybrook in 1708 by order of the General Court of Connecticut:" Buck's *Mass. Ecc. L.* 76 n. In May 1658 the Congregational churches of England issued the Savoy Confession as the symbol for the government of their churches. On the 12th May 1680 the synod of Boston approved the Savoy Confession: Buck 72-4. See Congregational Church described in *Weld v. May*, 9 Cush. 181. For the Baptist idea of the church: 20 Chr. Review 422; 22 Id. 593. For Universalist, see General Convention, 1863: Buck's *Mass. Ecc. L.* 68 n.

There are Congregational Methodists in Georgia, Alabama, Mississippi, Arkansas and Texas. Their organization commenced May 8th 1852.

For Unitarian Church *doctrine*, see *Christian Doctrine of Prayer*; *Christian Doctrine of the Forgiveness of Sin*; *Orthodoxy, its Truths and Errors, Steps of Belief, or Rational Christianity Maintained, &c.*; all by James Freeman Clarke; *Doctrine of Christianity*, by Wm. G. Eliot, D.D.; *Half-Century of the Unitarian Controversy*, by Geo. E. Ellis, D.D.; *Restatements of Christian Doctrine*, by Henry W. Bellows, D.D.; *Statements of Reasons for not Believing the Doctrines of Trinitarians concerning the Nature of God and the Person of Christ*. By Prof. Andrews Norton. With a *Memoir of the Author*, by Rev. William Newell, D.D., of Cambridge; *Works of William E. Channing, D.D.*, 6 vols.; *Unitarian Principles Confirmed by Trinitarian Testimonies. Being Selections from the Works of Eminent Theologians belonging to Orthodox Churches*. With *Introductory and Occasional Remarks*. By John Wilson; *Unitarianism Defined. The Scripture Doctrine of the Father, Son, and Holy Ghost*. By Rev. Frederick A. Farley, D.D.; *Translations of Scriptures*, by George R. Noyes, D.D.; *Theological Essays from Various Authors*. With an Introduction by Rev.

The Associated churches generally acknowledge the authority of a Confession of Faith³⁷ or Discipline, and a form of church government, and each particular society or congregation, and some or all the articles of religious faith and the form of govern-

George R. Noyes, D.D.; *The Bible and Popular Theology: a Restatement of Truths and Principles with special reference to recent works of Liddon, Lord Hatherly, the Right Hon. W. E. Gladstone, and others.* By Rev. G. Vance Smith, B.A., Ph. D., Minister of St. Saviorgate Chapel, York, England; *History of the Corruptions of Christianity.* By Joseph Priestley, LL.D., F.R.S., &c. Reprinted from Rutt's edition, with Notes. To which are appended Considerations in Evidence that the Apostolic and Primitive Church was Unitarian. Extracted from Priestley's Replies to Bishop Horsley, and others; *The Spirit of the Bible; Or, The Nature and Value of the Jewish and Christian Scriptures discriminated, in an Analysis of their several Books.* By Rev. Edward Higginson; *The Holy Scriptures of the Old Covenant, in a Revised Translation.* By Rev. Charles Wellbeloved, Rev. G. Vance Smith, and Rev. John Scott Porter; *Six Essays on Inspiration, Revealed Religion, and Miracles.* By Rev. Edward Higginson; *Reasons why I am a Unitarian.* In a series of Letters to a Friend. By Rev. John R. Beard, D.D.

The Year Book for 1873 of the Unitarian Congregational Churches says: "The American Unitarian Association, formed in 1825, and in 1847 legally incorporated [in Massachusetts] with power to receive and hold pecuniary trusts, has been for nearly half a century the principal organ of the missionary activity of the Unitarians of America. Its objects are, to collect and diffuse information respecting Unitarian Christianity; to produce union, co-operation, and sympathy among the Unitarian people; to publish and distribute books and tracts; to support missionaries, to aid clergymen with insufficient salaries, and to help in building churches."

For *history* of the "United Society of Believers" commonly called "Shakers," see "Christ's Second Appearing," by Ben. S. Young and Calvin Green, 4th ed., Albany 1856, Van Benthuysen, Pr.; *Millennial Church or Society of Believers called Shakers*, by Calvin Green, 2d ed., Albany 1848.

For church *doctrines*, see *The Manifesto or a Declaration of the Doctrine and Practice of the Church of Christ*, by John Dunlevy, of Pleasant Hill, Ky., 1818.

The United Society at "Shaker Village," Warren county, Ohio, have a MSS. Covenant under which their property is held in common, and the form of deed also of church property, never published.

³⁷ Buck, in defining a "Confession of Faith," says it is "a list of the several articles of the belief of any church. There is some difference between creeds and confessions. Creeds, in their commencement, were simply expressions of faith in a few of the leading and undisputed doctrines of the Gospel. Confessions were, on the contrary, the result of many a hazardous and laborious effort, at the dawn of reviving literature, to recover these doctrines and to separate them from the enormous mass of erroneous and corrupted tenets which the negligence or ignorance of some, and the artifices of avarice and ambition in others, had conduced to accumulate for a space of 1000 years, under an implicit obedience to the arrogant pretensions of an absolute and infallible authority in the Church of Rome:" Theo. Dic. 86.

ment are subject to the ecclesiastical control and legislative authority in a greater or less degree of higher ecclesiastical bodies.

The churches which adopt the Episcopal form³⁸ of government

³⁸ The best form for this purpose will be found in "A Compilation containing the Constitution and Canons of the Protestant Episcopal Church in Maryland, together with other documents," &c., &c., Baltimore, 1863, p. 35, where will be found the form of incorporating an Episcopal congregation under the Maryland Act of November Session 1802, chap. iii. and the supplements.

The General Synod of the [German] Reformed Church in the United States of America recommend a form also for special acts of incorporation for church. See Proceedings, December 3d, 1869, p. 85.

For a discussion of the Episcopal form of church government, see Buck's Theo. Dic., title Episcopacy 130; Bingham's *Origines Ecclesiasticæ*; Stillingfleet's *Origines Sacræ*; Boyse and Howe on Epis.; Benson's Dissertation concerning the first Settlement of the Christian Church; King's Const. of the Church; Doddridge's Lectures, Lec. 196; Clarkson and Dr. Maurice on Episcopacy; Enc. Brit.; Vinton's Manual Canon Law and Const. Prot.-Ep. Church.

Among the religious denominations which adopt the Episcopal form of government are the Roman Catholic, the Protestant Episcopal, the several Methodist organizations, with one exception, and the Moravians. Tyler's Ecc. L., ch. lxiii.

For church history, statement of *doctrines*, form of *church government*, and worship in Moravian Church, see The Moravian Manual (new and revised edition), by Bishop E. de Schweinitz, embracing the History of the American Moravian Church, the Constitution of the American Province, as amended since the General Synod of 1857, together with all by-laws passed by the provincial synod; The Banished Count, or Life of Nicholas Louis Zinzendorf, from the French of M. Felix Bouvet. By Rev. John Gill; Life and Times of David Zeisberger, the western pioneer and apostle of the Indians. By Bishop E. de Schweinitz; History of the Protestant Church of the United Brethren. By the late Bishop John Holmes. 2 vols. 8vo.; History of the Moravians, translated from the French, and abridged, with an appendix, by A. Bost. Geneva. 12mo; The Moravians in Greenland, 3d edition. Edinburg: Wm. Oliphant & Sons. 16mo.; Life of John Heckewelder. By the late Rev. Edward Rondthaler, edited by B. H. Coates; The Moravian Episcopate. By Bishop Edmund de Schweinitz; Notes on the Origin and Episcopate of the Bohemian Brethren. By Daniel Benham. London. 1867. 12mo.; Memoirs of James Hutton, comprising the annals of his life and connection with the United Brethren. By Daniel Benham. London. 1856. 12mo.; Church Constitution of the Bohemian and Moravian Brethren. The original Latin, with a translation, notes and introduction. By Bishop B. Seiffert. London. 1866.; Life of Bishop Spangenberg. By Ledderhose; Tune Books: Wollé's and Latrobe's; Missions-Atlas, containing fifteen maps of mission-provinces. Among recent German publications, Wunderling's Sermons on Old Testament Texts.

Rev. Francis Wollé, of Bethlehem (Pa.) Moravian Seminary, says, March 18th 1873: "Up to 1850 all the church property was held in name of an individual. He was required to make his will as soon as his name was used. This explained his trust. In the year above, acts of incorporation were obtained—one general act, and others for several congregations and institutions. The deeds as now used are of ordinary form. We have not had any difficulty in law cases."

generally, seek to have the title to property held for each parish,³⁹ society or congregation, so arranged that those who adhere to the faith and form of government established by the highest ecclesiastical authority, shall enjoy it as against all who dissent or seek to use it to propagate a different doctrine.

The same may be said of the religious societies which adopt the Presbyterian form of government.⁴⁰

³⁹ Reference has already been made to the definition of a church. See note 2, *ante*. For the Episcopal idea of the church, see 14 Church Review 635; for the Methodist, Meth. Quar., 1845, 153; for the Presbyterian Repertory, 1846, 137; 1853, 253; for the Orthodox Cong. Quar., July 1861; Bib. Sac., April 1865; Buck's Mass. Ecc. L. 68 n. The term parish and town were originally equivalent terms in the states which adopted the English system. But now parish is used only to designate a congregation of the Protestant Episcopal Church. It would be a work of great labor to give the rise, progress and history of parishes. Tyler, §§ 310, 403, &c.; Buck's Mass. Ecc. L. 18, 120, 250, &c.; Baker v. Fales, 16 Mass. 499.

As to town and parish organizations, see *First Parish in B. v. Wylie*, 43 Me. 387; *First Parish in B. v. Dunning*, 7 Mass. 445; *Bangs v. Snow*, 1 Id. 81; *Peckham v. Inhabitants, &c.*, 16 Pick. 274; *Cong. Soc. v. Swan*, 2 Vt. 222; *Keith v. Howard*, 24 Pick. 292; *Osgood v. Bradley*, 7 Me. (Greenl.) 411; *First Parish in S. v. Cole*, 8 Mass. 96; *Colburn v. Ellis*, 7 Mass. 89; *Lord v. Chamberlain*, 2 Me. (2 Greenl.) 67; *Jones v. Carey*, 6 Me. 448; *Fernald v. Lewis*, 6 Id. 264; *Sutton v. Cole*, 3 Pick. 232; *Humphrey v. Whitney*, 3 Id. 158; *White v. Braintree*, 13 Metc. 506; *Tobey v. Warham*, 13 Id. 440; *Brown v. Porter*, 10 Mass. 98; *Jewell v. Burroughs*, 15 Id. 464; *Emerson v. Wiley*, 10 Pick. 317.

⁴⁰ Among the religious denominations which adopt the Presbyterian form of government are the several Presbyterian organizations, the "Reformed Church in America" [late Dutch], and the "Reformed Church in the United States," the name of which was the German Reformed Church, until changed by the General Synod, Nov. 30th 1869.—Proceedings of General Synod, p. 45.

This church adopts as its creed the Heidelberg Confession of Faith, in the form of a Catechism. See *Germ. Ref. Ch. v. Seibert*, 3 Pa. St. R. 282; *Att'y.-Gen. v. Minister, &c.*, 36 N. Y. (9 Tiff.) 452; s. c., 2 Trans. App. 145; 33 Barb. 303. Tyler's Eccl. L., ch. lxiii.

For works on the HISTORY of the German Reformed Church, see History of the German Reformed Church, by Rev. Lewis Mayer, D.D., 2 vols., Baltimore, 1860; Handbook of Christian Church and Dogmatic History, by Dr. J. H. A. Ebrard, 14 vols., Erlangen (Germany), 1860.

Works on the DOCTRINES of the German Reformed Church.—The only creed, or Confession of Faith of the German Reformed Church, is "*The Heidelberg Catechism*," composed by Drs. Zacharias Ursinus and Casper Alevianus, and first published in Heidelberg, Germany, in the year 1563. It has been published in almost innumerable editions, and in all modern languages. The Heidelberg Catechism, in German, Latin and English, Tercentenary edition, New York, 1863. Commentary of Dr. Z. Ursinus, on the Heidelberg Catechism, translated by Rev. G. W. Williard, D.D., Columbus, O., 1851. The Dogmatic of the Evangelical Reformed Church, with proof passages from the original sources, by Dr. Henry

Whatever form of government a church may adopt, each par-

Heppe, 1 vol., Elberfeld (Germany), 1861. Christian Dogmatic, by Dr. J. H. A. Ebrard, Doctor of Theology, Königsberg (Germany), 1863. H. A. Niemeyer? *Collectio Confessionum in Ecclesiis reformatis publicatorum*, Leipsic, 1840

Works on the Church Government of the German Reformed Church.—The Church Government of the Ger. Ref. Church is laid down in the "Constitution of the Ger. Ref. Church" (usually appended to the Heidelberg Catechism). No special works have been published on this subject, because the Constitution speaks for itself. It is strictly *Presbyterian*, as to the mode of government, as will be readily seen. It has four ascending grades of judicatories or church courts, which is the distinguishing feature in what we call the *Presbyterial Form of Church Government*. These courts are substantially the same, though differently named, in the different Presbyterian bodies. For example:—

<i>In the Presbyterian Church.</i>	<i>In the German Church.</i>	<i>In the Dutch Reform.</i>
1. Session.	1. Consistory.	1. Consistory.
2. Presbytery.	2. Classis.	2. Classis.
3. Synod.	3. Synod.	3. District Synod.
4. General Assembly.	4. General Synod.	4. General Synod.

The courts look *upon doctrine* as the distinguishing mark of denominations and denominational rights, rather than upon church government. And yet, in some cases this latter may also become important.

The Rev. Jeremiah H. Good, D.D., first vice-president of the synod of the [late German] Reformed Church in Ohio and adjacent states, gives the following sketch of the forms of church government of the various denominations in the United States. He says: "There are now fully one hundred different denominations in the United States. We may classify them in regard to *form of government*, into four classes.

I. THE PRESBYTERIAN GROUP.—The main features are: Parity of the ministers; ascending series of church courts; what we would call republican form of government.

1. The Presbyterian Church.
2. The United Presbyterians.
3. The (German) Reformed Church of N. A.
4. The Reformed (Dutch) Church of N. A.
5. The Reformed Presbyterians (Covenanters).
6. The Reformed Presbyterian Church.
7. The Associate Reformed (or Seceders).
8. The Lutheran Presbyterian Church.

The following are fundamentally Presbyterian, but have taken up Congregational and other elements:—

9. The Lutherans.
10. The Methodist Episcopal.
11. The Methodist Protestant.
12. The Methodist Episcopal, South.
13. Reformed Methodist.
14. True Wesleyan Methodist Church.
15. African Methodist Episcopal Church.
16. Zion's Wesleyan Methodist Church.
17. Evangelical Association (or Allbright's).
18. United Brethren in Christ.

ticular society or congregation will generally have a fixed place

19. German Evangelical.

20. Church of God (or Winebrennarians).

II. THE CONGREGATIONAL GROUP.—Main features are : Each congregation in theory is independent ; no church courts with judicial or legislative (but only advisory) power. Democratic.

1. Orthodox Congregationalists.

2. Unitarians (or Unitarian Congregationalists).

3. Christians (or New Lights).

4. Baptists, a Regular.

 ,, b Anti-Mission (Hard Shell).

 ,, c Free Will.

 ,, d Six Principle.

 ,, e Seventh-Day.

5. Tunkers (or German Baptists).

6. German Seventh-Day Baptists.

7. Campbellites (or Reformed Baptists).

8. Mennonites.

9. Reformed Mennonites.

10. Omish.

11. Schwenkfelders.

12. Universalists.

13. Second Adventists.

14. Rationalists.

15. Swedenborgians (or New Jerusalem).

III. THE EPISCOPAL GROUP.—*Distinguishing features*.—No parity in the ministry, but an ascending grade of orders (*e. g.*, deacons, priests, bishops).

1. The Protestant Episcopal Church.

2. The Moravians (or Unitas Fratrum).

The Methodist Episcopal Church have bishops in name, but these are not regarded as a higher order of ministers. Hence the Methodists belong to the Presbyterian order.

IV. THE PAPAL ORDER.—*Distinguishing features*.—No parity in the ministers, but ascending orders, culminating in the Pope.

1. The Roman Catholic Church."

Buck says : "The particulars of the [*Presbyterial*] system are detailed in the form of government and directory for the worship of God, which are appended to the Confession of Faith, Larger and Shorter Catechisms, framed by the Westminster Assembly in 1643, ratified by the General Assembly of the Church of Scotland in 1645, and formally adopted by the Synod of Philadelphia in 1729. In May 1785, after the Revolution, these standards were revised, a portion of the rules better adapted to the condition of the American church, and some considerable alterations made in the confession and catechism. With these modifications the book was adopted as the constitution of the church, subject to further alteration by the Assembly." Buck's Theo. Dic. App. p. 463. And see Hodge's Theology recently published.

As to the United Presbyterian Church, see "The Testimony of the U. P. Church of North America," adopted at the union between the Seceders and Associate Reformed Church. Since then "a Book of Discipline has been adopted."

for the meeting of its members.⁴¹ Every such congregation, in its aggregate character, the persons who represent its property, interests, the ecclesiastical officers who have charge of its religious

⁴¹ A corporation has recently been organized in New York to hold Methodist camp meetings wherever deemed expedient. One religious society may be composed of members scattered so that they may find it convenient to have two or more places of worship.

Among the works on church authority recognised are "Durham on Scandal," "Pardovan and Stewart's Collections."

Buck says: "As to the church government among the Scotch Presbyterians no one is ignorant; but from the first dawn of the Reformation among us till the era of the Revolution, there was a perpetual struggle between the court and the people for the establishment of an Episcopal or a Presbyterian form. The former model of ecclesiastical polity was patronized by the house of Stuart on account of the support which it gave to the prerogatives of the crown; the latter was the favorite of the majority of the people, perhaps not so much on account of its superior claim to apostolical institution as because the laity are mixed with the clergy in church judicatories, and the two others which, under episcopacy, are kept so distinct, incorporated, as it were, into one body. See Hall's View of a Gospel Church; Encycl. Brit. art. Presbyterians; Brown's Vindication of the Presbyterian form of Church Government; Scotch Confession and Directory." Buck's Theo. Dic., title "Presbyterians" 367 and App. 2, p. 463.

The Established Church of Scotland has maintained from 1592 to this time that it is the duty of the civil authority to call church courts, "naming time and place of a *pro re nata*, and the ordinary meeting of the General Assembly of the church." See "The Book of the Universal Kirk of Scotland" 373, 305; Hetherington's Hist. of Church of Scotland 99, 110, 165; Calderwood's Hist. Ch. Scotland. The Act of Parliament of 1592 authorizes the general assembly to be held once every year, or oftener *pro re nata*, the time and place to be appointed by his majesty or his commissioner, or, if neither be present, by the assembly. In the year 1581 the second book of discipline was incorporated in the acts of assembly. The heading of one chapter (the tenth) is in the following words: "Of the office of the Christian Magistrate in the Church."

The following are some of the particulars of the chapter: "Kings and princes that be godly sometimes by their own authority (where the church is corrupt and all things are out of order) place ministers, and restore the true service of the Lord." See Craig's Catechism, recommended by the assembly, 1792; James Reid's Memoirs of the Westminster Assembly of Divines; Reformed Presbyterian, 1867, p. 33, 331; Ordinance of Parliament, October 23d 1644, for ordination of ministers; Ordinance, July 10th 1646, under which Francis Woodcock was appointed minister; Reid's Memoirs, vol. 1, 265; Hetherington's Hist. of Westminster Assembly of Divines 224, 239, 240, 306.

On the 22d of April 1647, the Houses of Parliament published resolutions entitled, "Remedies for removing some obstructions to church government," in which they ordered letters to be sent to the several counties of England, requiring the ministers immediately to form themselves into distinct Presbyteries, and appointing

and disciplinary objects and duties, the pastor and members of such congregations individually, the ecclesiastical bodies clothed with advisory or legislative power over the societies of a denomination in defined districts or generally, all have, or may make a claim to the aid or protection of law—all have rights to be secured, wrongs to be redressed, remedies to be sought.

These arise in so many forms that it is impossible to enumerate them. The right to peaceably assemble and worship, or engage in religious exercises or discussions, or in teaching and receiving

the ministers and elders of the several Presbyteries of the province of London to hold their Provincial Assembly in the Convocation house of St. Paul's, on the first Monday of May.

According to this appointment the first meeting of the Provincial Assembly or Synod of London was held on the 3d of May 1647.

In the year 1647 the Westminster Confession of Faith was received by the Church of Scotland. See *Informatory Vindication* 202; *Robt. Jamison's Hist. Ch. Scot.*; *Summary of Laws and Regulations of Church of Scotland* 418.

In this is what is called the adopting act of the Westminster Confession of Faith, published as their act, also the first and second Books of Discipline.

Reformed Presbyterian and Covenantor of 1867, page 331, Rutherford says: "The king's royal power in adding his sanction to the Ecclesiastical Constitutions, and in punishing such as are to be decreed heretics by the church, is regal."

Evangelical Repository of March 1846, "The Divine right of the Church Government." This book was written during the sittings of the Westminster Assembly, by sundry ministers of Christ within the city of London. See p. 73.

"Oliver Cromwell, with the advice of his council, published an ordinance, under date of August 28th 1654, entitled 'An Ordinance for ejecting ignorant and insufficient ministers and schoolmasters.'" Reid's *Mem.*, 1 vol. 195, &c. See Bellefontaine, Ohio, Press, March 6th 1873. But the Free Kirk of Scotland dissents from this view of the regal authority of the civil magistrate. For cases growing out of the organization of the Free Church of Scotland, see *Shaw's Reports of Cases in the Court of Session*. See the *Law of Creeds in Scotland*, by Innes, Edinburgh, 1867. Acts of the General Assembly of the Church of Scotland, 1638 to 1842. Edinburgh, 1843.

Among the English Works on Ecclesiastical Law are,

Burns's Ecclesiastical Law,	4 vols.
Curteis's do.	3 vols.
James Thomas, do.	2 vols. in 6 parts, 1865.
H. W. Cripps, do.	1 vol. — 1863.
Francis N. Rogers, do.	1 vol. — 1849.
Geo. R. Harding, do.	2d ed. — 1862.

Ecclesiastical Jurisdiction, by E. Edwards, London, 1853; *Practice of the Ecclesiastical Courts*, by Henry Charles Coote, London, 1847; *Parson's Counsellor with the Law of Tithes*, by Simon Degge, Kt., with additions by Charles Ellis, London, 1820, 7th ed.; *Clergyman's Legal Hand-book*, by James Murray Dale, 5th ed., London, 1866; *The Laws respecting Pews*, by H. S. English, London, 1826.

instruction in moral or religious truths without molestation, are among the *religious* objects which may raise legal inquiries. The levy, collection and disbursements of money, for the support of a pastor and for moral and religious enterprises, the employment, call or settlement of a pastor;⁴² his secession or dismissal from office, the appointment of agents of various kinds; the acquisition of real estate, and the erection thereon of church buildings, parsonages, school-houses and other structures, the improvement and care of cemetery grounds, &c., the control and sale of property, the union⁴³ or division⁴⁴ of societies; rights of property in

⁴² The judicial courts will not revise the regular determinations of an ecclesiastical court in dismissing a minister for cause: *Chase v. Cheney*, Ills. Sup. Ct. 1871, 10 Am. Law Reg. N. S. 295. The very valuable notes in the Law Register contain an elaborate discussion of this subject. See note 45, *post*; 25 Ills. R. 456; *Walker v. Wainwright*, 16 Barb. 486; *Missouri v. Farris*, 45 Missouri 183; *Germ. Ref. Ch. v. Seibert*, 3 Penna. St. 282.

A minister improperly excluded from a pulpit, has a remedy at law: *Lynd v. Menzies*, 8 Am. Law Reg. N. S. 94, Sup. Ct. N. J. 1869.

As to sundry matters relating to ministers, see Buck Eccl. L. 16, 53, 85, 185, 222, &c.; Clinton's N. Y. Dig. 2885.

A minister of the Established Church cannot, *sua sponte*, secede: *Barnes v. Shore*, 4 Times Rep. 593; Buck Eccl. L. 109.

⁴³ Union.—Two religious societies may unite in one: *Barrell v. Assoc. Ref. Ch.*, 44 Barb. 282; *Madison Av. Bap. Ch. v. Bap. Ch.*, 3 Robt. 570; *Peckham v. Inhabitants*, 16 Pick. 274; *Salter v. Trustees Ref. Dutch Ch.*, 42 Penna. St. 503; *Cammeyer v. United Germ. Luth. Ch.*, 2 Sandf. Ch. 186.

The act of union between the General Synod of the Associate Ref. Ch. and the General Assembly of the Presby. Ch. of 1822, was held invalid. Those who adhered to the old organization of the Associate Ref. Church, retain all property: *Associate Ref. Ch. v. The Theological Sem.*, 3 Green Ch. 77.

In Pennsylvania the union of Associate [Seceders] Church and Associate Ref. Synods into the United Presbyterian is sustained: *McGinnis v. Watson*, 5 Wright R.; 2 American Law Reg. 251, N. S.; *McBride v. Porter*, 17 Iowa 204; *People v. Farrington*, 22 How. N. Y. 294. And see *Miller v. Gable*, 2 Denio 535; *Com. v. Fisk*, 8 Metc. 238; *Sutter v. Trustees*, 6 Wright Penna. R.; 2 Am. Law Reg. N. S. 505.

In 1870 the Old and New School Presbyterians united, merging the two General Assemblies into one.

Some movements have been made in favor of a union of the Reformed Church in the United States [late German] and the [late Dutch] Reformed Church in America. See Proceedings of Germ. Ref. Ch., Dec. 3d 1869, p. 84.

Efforts are being made to unite the several Methodist churches of North America: Minutes General Conference, 1872, Wm. Lawrence's Resolution, pp. 199, 211, 412.

In Ohio the Act of April 2d 1870, 67 Laws 30, authorizes the consolidation of two societies of the same faith. It is probably *cumulative* to the common-law right of union.

⁴⁴ The division of a religious society may be *voluntary* or *involuntary*.

case of excommunication,⁴⁵ schism, secession, change of doctrine,

⁴⁵ The determination regularly made and proved of ecclesiastical tribunals on questions within their jurisdiction is generally regarded in judicial courts as conclusive. Hence in Kentucky, under a statute which provided that in case of schism or division, the trustees of a church should permit each party to use the church a part of the time proportioned to numbers, and that the excommunication of a portion shall not impair such right except it be *bonâ fide* made on the ground of immorality, it has been held that an ecclesiastical judgment of excommunication for *disloyalty* was conclusive on the judicial courts, and the excommunicated party lost all right to the use of church property : *Garten v. Penick*, Ky. Ct. Appeals, 1870; 9 Am. Law Reg. N. S. 211 and notes; 10 Law Reg. 430 (July 1872); Am. Law Record 154; *Curd v. Wallace*, 7 Dana 195. As to the conclusiveness of ecclesiastical determinations Chancellor REDFIELD cites *Watson v. Avery*, 2 Bush. 398; *Shannon v. Frost*, 3 B. Mon. 261; *Gibson v. Armstrong*, 7 Id. 481; *Den v. Bolton*, 2 Green's Ch. 322; *Am. Prim. Soc. v. Pellings*, 4 Zab. 659; *Germ. Ref. Ch. v. Seibert*, 3 Penna. St. 291; *Sutter v. Dutch Ref. Ch.*, 6 Wright Penna. 503; *Cone v. Green*, 4 Whart. 509; *Robertson v. Bullions*, 9 Barb. 134. See *Smith v. Wilson*, 18 Vt. 511; *Watson v. Jones*, 13 Wallace, Am. Law Reg. July 1872, p. 430; Am. Law Record 154. The determination of church judicatories are not generally conclusive as to rights of property : *Lawyer v. Clipperly*, 7 Paige 281. But in the Associated Churches where the right to property depends on the question which one of two parties is the true church, the decision of the proper ecclesiastical body on that subject is deemed conclusive by the judicial courts : *McBride v. Porter*, 17 Iowa 204; *Watson v. Jones*, 13 Wallace R.; *First Cong. Presby. Church v. Cong. Soc.*, 23 Iowa 567.

In such cases where by title-deed of property, or act of incorporation, a congregation is in connection with and subject to a higher ecclesiastical body, or where a controversy is voluntarily submitted to such body, its decision is in the nature of an award. See note 30, *ante*. See note 42, *ante*. In independent churches a church judicatory cannot, as a general rule, deprive a *majority* of property rights. See note 53, *post*; 17 Iowa 204; Angell & Ames on Corp., § 499; 2 Kent 293; 6 Ohio 363; 7 S. & R. 517. And in associated churches the same rule prevails unless property is specifically devoted for a particular faith. See note 55, *post*.

In *Michigan* a bill recently passed the Senate, but was defeated in the House, to regulate excommunications from churches. It was designed to limit the power of Catholic bishops. This bill grew out of the excommunication of Patrick Bunbury, of Kalamazoo, Michigan, in the fall of 1873, for having sued a bishop. As to this, see Harper's Weekly, N. Y., April 5th 1873, in which it is said, "Excommunication has reduced the German church to subjugation, and terrified the church of France. To weaken the force of excommunication Germany has passed its most stringent laws, and Switzerland has expelled its contumacious bishop." It has been strongly urged, however, that if the power to interfere with church usages is once exercised, the precedent may "return to plague the inventors." In religious toleration there is safety, while intolerance may give rise to strife, if not worse.

A voluntary division may occur where the members of a congregation become too numerous. In the compilation of the constitution and canons of the Protestant Episcopal Church in Maryland, published in 1863 by order of the convention in

or in case of controversy on new questions as to which there is

the diocese of that state, forms and instructions are given for such division. See page 31. A division may arise in case of controversy over some minor matter, not involving any established doctrine of faith or church government, as for instance, whether a musical organ shall be used, or pews sold, or in relation to promiscuous sittings, and like questions, or it may involve fundamental principles. The division may take place by mutual agreement or by secession, having the consent of only the seceding party. An involuntary division may occur by the controlling power in a congregation expelling a portion of the members, or by excluding them from church privileges. A division may be local in one congregation, or extending generally to a whole denomination.

In the associated societies it may or may not extend to the controlling and legislative ecclesiastical bodies. Some of the Reformed Presbyterian (Covenantor) congregations divided on the "Deacon question," though all acting in connection with the same Presbytery, Synod and General Assembly. See note 49, *post*.

In *Hadden v. Chorn*, 8 B. Monroe 80, a division "grew out of an honest difference of opinion upon the subject of missionaries," and in *Baptist Ch. v. Wetherel*, 3 Paige 296, because of dissatisfaction with a minister.

By the division into Old and New School in the Presbyterian Church in 1837, "509 ministers and 60,000 communicants lost their connection with the Old School General Assembly:" *Com. v. Green*, Sup. Ct. Penna. See "Report of the Presby. Ch. Case" (by Samuel Miller, Jr., Philada., 1839, 4 Wharton 531; *York v. Johnston*, 1 W. & S. 9; *Means v. Presby. Ch.*, 3 Id. 313; Buck Ecc. L., Mass. 67 n.; Repertory 92 (1840); *Gartin v. Penick*, Kentucky Court Appeals, 1870, 9 Am. Law Reg., N. S. 211; Buck 102 n, 127 n. As to power of General Assembly: *Missouri v. Farris*, 45 Missouri 183.

The Scotch cases extended from 1836 to 1843. "One-third of the established clergy of Scotland were deprived of their livings:" Buck 67; Repertory 86 (1844); 2 May's Const. Hist. of Eng.

The division in the Methodist Church in 1844 on the slavery question is explained in 16 Howard 301; Meth. Quar. 396, 665 (1851); 1 Choates's Memoir 170; *Bascorn v. Lane*, 4 Am. L. J. 193; s. c. 9 West. L. J. 162; 5 McLean 369; 2 West Va. 310. See Lawrence's Address, note 31, *ante*; 7 B. Monroe 481; 13 Grattan 300.

The Baptist Church was divided in 1845 on the same question, but Buck says, "As they were Congregationalists, pure and simple, they have had no international lawsuits:" 10 Christian Review 11, 114, 479. For divisions on slavery question, see Meth. Quar. 1849, 282, and 1851, 396; Princeton Repertory 1847, 427; 1849, 39, 582; 1858, 556; 1861, 322, 547, 758; 1862, 499; 1863, 496; 10 Christian Review 479; 11 Id. 114; 15 Id. 271. For division in Presbyterian Church: *Watson v. Jones*, 13 Wallace; *Watson v. Farris*, 45 Missouri 183.

The division of the Society of Friends into Orthodox and Hicksites occurred in 1827: *Earle v. Wood*, 8 Cush. 430; *Hendrickson v. Decow*, 1 Saxton Ch. 577; *Dexter v. Gardner*, 7 Allen 243; Buck 166; 30 Examiner 237; 52 Id. 321; *Field v. Field*, 9 Wend. 394; *State v. Hillis & James*, in Com. Pleas, Jefferson Co., Ohio, 1828, reported by Gould. On the 9th September 1854, the Ohio Yearly Meeting of Friends divided into two Ohio Yearly Meetings, one popularly called Wilburites and the other Gurneyites: *Harrison v. Hoyle*, now in Ohio Supreme Court, involves title to Mt. Pleasant boarding-school, and the question whether the "Wilburites" or "Gurneyites" are the true Quakers.

Upon these subjects generally see: *Wiswell v. First Cong. Ch.*, 14 Ohio St

no settled doctrine,⁴⁶—these, and many other questions, are among

541; *Price v. Church*, 4 Ohio 541; *Denton v. Jackson*, 2 Johns. Ch. 320-9; *Angell & Ames on Corp.* § 194; *Methodist Church v. Remington*, 1 Watts 227; *Presbyterian Cong. v. Johnson*, 1 W. & S. 40; 1 Speer's Eq. R. 90; 23 Barb. 337; 2 Wend. 135; 2 Sand. Ch. R. 188; *Smith v. Swornstedt*, 5 McLean 369; s. c. 16 How. 288; *Bascom v. Lane*, 4 Am. Law Jour. 193; 9 West. Law Jour. 162; *Gibson v. Armstrong*, 7 B. Monroe 481; *Brooke v. Shacklett*, 13 Grattan (Va.) 300; *Venable v. Coffman*, 2 West Va. 310; *Garten v. Penick*, 9 Am. Law Reg. N. S. 212 and note; *Vasconcelles v. Ferraria*, 27 Ill. 237; *Goesele v. Bimeler*, 8 West. Law Jour. 385; *Gaseleys v. Separatists*, 13 Ohio St. 144.

The statute of Kentucky provides that in case of schism or division, "the trustees shall permit each party to use the church a part of the time proportioned to the numbers of each party, "unless excommunicated *bonâ fide* on the ground of immorality:" *Garten v. Penick*, 9 Am. Law Reg. N. S. 212; Ky. Ct. Appeals 1870. In case of division there may be an alternate use by agreement: *Id.* As to right to expel for slavery opinions and disloyalty, see *Fulton v. Farley*, 9 Am. Law Reg. N. S. 412 n. See *Id.* 212. Rights of property in case of a division of parish. *Inhabitants v. Sites*, 19 Pick. 317; *Milton v. Parish*, 10 Id. 447; *First Parish v. Smith*, 14 Id. 297; *Minot v. Curtis*, 7 Mass. 441; *Sutton v. Cole*, 8 Id. 96; *Winthrop v. Winthrop*, 1 Me. (Greenl.) 208; *Dellingham v. Snow*, 3 Mass. 276; s. c. 5 Id. 547; *Second Ecc. Soc. v. First Ecc. S.*, 23 Conn. 255; *Buck's Mass. Ecc. L.* 58; *First Parish v. Second P.*, 22 Conn. R.; s. p. *Dean v. Bolton*, 7 Halstead 206; *Cammeyer v. Germ. Luth. Chs.*, 2 Sandf. Ch. 216; *Robertson v. Bullions*, 1 Kernan 255; 9 Barb. 64.

⁴⁶ If such or indeed any division should occur in an independent congregation, the adhering, qualified and legal non-seceding majority of course would control, unless restrained by some trust or other express provision. In *Hadden v. Chorn*, 8 B. Mon. 76, where a division occurred, each party claiming to be the true church, the court said, in order to decide it, "we must resort, as the only test, to their numerical strength at the time of the division:" 2 Peters 566. See cases, notes 53 and 55, *post*. But such division might arise in one of the associated congregations. The proper church officers charged with ecclesiastical duties, and as to temporalities, who might be elected according to prescribed rules or usage, would control. In case of schism, without difference in doctrine, those who adhere to the *old* organization are entitled to its property: *Wiswell v. Cong. Ch.*, 14 Ohio St. 44; 2 Bligh. 529; 9 Wend. Such division might also arise in the highest ecclesiastical body of associated churches. Such bodies are sometimes charged with the duty of appointing trustees for school property, churches and religious purposes, as in *Harrison v. Hoyle*, now in Ohio Supreme Court. And see note 26, *ante*. In case of such division the party *seceding* could claim no right or power as the supreme ecclesiastical body: *Wiswell v. Cong. Ch.*, 14 Ohio St. 32. But there might be such division under circumstances where neither could be called *seceders*, and both parties would claim to be the *true* body. There cannot be two true bodies, two supreme co-ordinate governments or tribunals exercising jurisdiction over the same associated congregations or subjects: *Den v. Bolton*, 7 Halst. 219; *Gibson v. Armstrong*, 7 B. Mon. 491; *Hendrickson v. Decow*, 1 Saxt. Ch. 577.

If before the actual division occurred, the controverted question should be deter-

the temporal objects, in relation to which an appeal may be made to the law and the remedial justice of courts, and which are to be more fully discussed in subsequent chapters.

With these brief summaries of the forms of church organizations, and subjects which may give rise to legal investigation, the inquiring mind will be naturally led to the forms or agencies through which religious objects may be and generally are sought or accomplished.

A church, religious society or congregation, then, may seek its organized purposes through the agency of

I. An unincorporated association;⁴⁷ or,

mined according to usage or prescribed rule, which would generally be by the proper majority, the prevailing party maintaining its organization would necessarily be regarded as the authoritative body. But the dispute might precede any organized meeting, or meet it in the attempt to organize, so that none could be effected of all the contending members, or no decision be made, and thus two separate organizations might originate. Neither of these might, from some cause, as for want of a quorum according to the ecclesiastical law of the body, become a legal body. But if no such impediment intervened, and if it could be possible, without violating any rule or usage, to organize two separate bodies, very embarrassing questions might arise in courts. As there can be no right without a remedy, rights would necessarily be carried into effect *cy pres* where no other principle could be adopted.

⁴⁷ *Unincorporated Societies*, members of not liable for debts unless they sanction or acquiesce in their creation: *Devoss v. Gray*, 22 Ohio St. 160. As to partition of property: *Goesele v. Bimeler*, 8 West Law J. 385; 5 McLean 223; 14 How. 589; *Goesele v. Separatists*, 13 Ohio St. 144. Cannot sell property except as law authorizes: *Devoss v. Gray*, 22 Ohio St. 160. May sue: *Christian Society v. Macomber*, 5 Metc. 155; *Weld v. May*, 9 Cush. 181; *Jefts v. York*, 10 Id. 392; *Sawyer v. Baldwin*, 11 Pick. 492; *Fisher v. Whiteman*, 13 Id. 350. Have they rights in collective capacity? Tyler, §§ 102, 825; *Ref. D. Ch. v. Veeder*, 4 Wend. 494; *Green v. Cady*, 9 Id. 414; *Banks v. Phelan*, 4 Barb. S. C. R. 80; *Bailey v. Trustees*, 6 R. Isl. 491; *Buck Eccl. L.* 58; *Baker v. Fales*, 16 Mass. 488. Not organized under Mass. Stat. of 1811 by subscription for worship: *Jones v. Carey*, 6 Greenl. Maine 448.

A bequest "to the Yearly Meeting of Friends in New York," an unincorporated society, was held valid: *Wright v. Trustees M. E. Ch.*, 1 Hoff. Ch. 202; *Magill v. Brown*, Bright 346-410. See *Penfield v. Skinner*, 11 Verm. 296; *Attorney-Gen. v. Jolly*, 1 Rich. 99, *contra*; *Green v. Allen*, 5 Humph. 170; *Barr v. Smith*, 7 Verm. 240.

Equity preserves and controls trusts for: *Watson v. Jones*, 13 Wallace; *American Bible Society v. Marshall*, 15 Ohio St. 538; *Bartlett v. Nye*, 4 Metc. 378; *Urmey v. Wooden*, 1 Ohio St. 160; *Tiffany & Bullard Trustees* 238 n.; *Preachers' Aid Society v. Rich*, 45 Maine 552; *Hornbeck v. Am. Bible Soc.*, 2 Sandf. Ch. 133; *Washburn v. Sewell*, 9 Metc. 280; *Williams v. Williams*, 4 Seld. 526; *Bryant v. McCandless*, 7 Ohio (Pt. 2) 135; *Brown v. Kelsey*, 2 Cush. 243; *Evangelical Association's Appeal*, 35 Penna. St. 316; 1 Burn's Eccl. Law 226; *Harvard College*

II. By this and the aid of unincorporated trustees⁴⁸ and agents; or,

v. Society, &c., 3 Gray 283; *Assoc. Ref. Ch. v. Trustees*, 3 Gr. C. R. 77; *Beatty v. Kurtz*, 2 Peters 566; *Hunter v. Trustees*, 6 Hill 407; *Kreyls v. Fulk*, 3 West Va. 84; 2 Id. 319.

The Society of Friends "have no incorporated religious societies:" Tyler, § 167. Their property is held by trustees, or in some states statutory provision is made, securing property in succession to certain church officers: Tyler, §§ 167, 172, 337, 362, 458. The Shakers hold property in common: Id.

⁴⁸ By the common law, property may be held by unincorporated trustees for the use of a congregation or other religious purposes as specified in a trust deed, devise or dedication. If the trust deed be to a party and heirs, the fee would, upon the death of the grantee, descend to his heirs clothed with the trust, or if he had no heirs, equity would appoint a trustee. If the deed be to several persons named, the survivors and survivor of them and the heirs of such survivor, effect would be given to the deed in the same way. But this would incur expense and give to courts the selection of a trustee upon the death of a surviving grantee without heir, or in case of an incapable or improper person as heir to execute the trust. It has been both asserted and denied that if a deed be made with warranty to grantees named and successors in a trust to be appointed by surviving trustees, or by appointment of a congregation, or by designation as of a named officer of a church, the fee would pass to such successors at law by estoppel. However this may be, equity would secure the perpetual execution of the trust, where a perpetuity was intended.

The only or principal objection, then, to common-law trustees is the control exercised by courts and the expense. To avoid these statutes exist very generally giving a corporate or *quasi* corporate capacity and succession to trustees, and authorizing the appointment of successors by a church, according to its rules or as prescribed in the original trust deed. All these questions are considered in the following cases: *Mason v. Manchester*, 9 Wheat. 445; *Lewin Trusts*, 2 Ed. 234; *Welch v. Allen*, 21 Wend. 147; *Trent v. Hanning*, 7 East 97; *Shaw v. Weigh*, 2 Stra. 803; *Fletch. Trust*, 49; *Gibson v. Montfort*, 1 Ves. Sr. 485; *Gibson v. Rogers*, Ambler 95; *Perry on Trusts*, § 320; *Wright v. Delafield*, 23 Barb. 498; *Rutledge v. Smith*, 1 Busb. Eq. 283; *Liptrot v. Holmes*, 1 Kelley 390; *Neilson v. Lagow*, 12 How. 110; *North v. Philbrook*, 34 Maine 537; *Morgan v. Leslie*, *Wright* (Ohio) R. 144; *Miles v. Fisher*, 10 Ohio 1; 4 Id. 515; *Williams v. First Presb. Soc.*, 1 Ohio St. 478; 12 Mass. 555; *Gibson v. Armstrong*, 7 B. Monroe 481; 9 Cranch 53; *Doe v. Fricks*, Exch. 510; *Hawkins v. Chapman*, 36 Md.; 12 Am. Law Reg. 57 (Jan. 1873); *American Bible Soc. v. Marshall*, 15 Ohio St. 538; *Urmey v. Wooden*, 1 Id. 160; *Bartlett v. Nye*, 4 Metc. 378; *Dela-plaine v. Lewis*, 19 Wis. 476; 2 Gibbs's Mich. 115; 9 Am. Law Reg. N. S. 213; *Goesele v. Bimeler*, 8 West. Law J. 385; McLean, June 1851; *Terrett v. Taylor*, 9 Cran. 43; *Blight v. Rochester*, 7 Wheat. 535; *Carver v. Jackson*, 4 Pet. 83; 2 Washburn Real Prop. 186; *Villiers v. Villiers*, 2 Atk. 71; *Fisher v. Fields*, 10 Johns. 505; *Oates v. Cooke*, 3 Burr 1684; *Gould v. Lamb*, 11 Metc. 87; *Newhall v. Wheeler*, 7 Mass. 189; *Attorney-General v. Proprietors*, 3 Gray 48; *Cleveland v. Hallett*, 6 Cush. 406; *King v. Parker*, 9 Id. 71; *Stearns v. Parker*, 10 Metc. 32; *Bundy v. Birdsall*, 29 Barb. 31. See Buck Mass. Eccl. L. 126.

Charitable Uses.—Grants for public, pious or charitable uses not within the sta-

III. By an unincorporated association with the aid of either a corporation or trustees having corporate or quasi corporate powers and succession, enabled to hold property in trust for such association.⁴⁹

tute, prohibiting entails : *Bryant v. McCandless*, 7 Ohio (2 Pt.) 135 ; *Miles v. Fisher*, 10 Ohio 1 ; *Williams v. Presb. Soc.*, 1 Ohio St. 166 ; *Urmey v. Wooden*, 1 Id. 160 ; Buck Mass. Eccl. L. 171 ; *Hadley v. Trustees*, 14 Pick. 253 ; *State v. Gerard*, 2 Ired. Ch. 210 ; Perry on Trusts, § 384, note, where cases are collected. But in New York, since the case of *Williams v. Williams*, 4 Seld. 538, charities have been subjected to the statute against perpetuities : *Levy v. Levy*, 33 N. Y. 97 ; *Bascom v. Albertson*, 34 Id. 504 ; *Wilson v. Lynt*, 30 Barb. 124 ; 6 How. N. Y. 348. See *Tucker v. St. Clement*, 4 Seld. 558 ; 3 Sandf. 242.

Equity courts in Ohio, independently of the Statute of Charitable Uses (43 Elizabeth), enforce such trusts : *Urmey v. Wooden*, 1 Ohio St. 160 ; *Perin v. Carey*, 24 How. 465. See cases cited note 11, ante. So in New York : *Williams v. Williams*, 4 Seld. 525 ; Brightly Fed. Dig. 115 ; Ang. & A. Corp., 9 Ed. ch. v., §§ 167, 177. The statutes of 8 Eliz. c. 11 ; 35 Eliz. c. 3 ; 39 Eliz. c. 4, 21, and 43 Eliz. c. 2 and 8, relate to the support of the poor, &c. An abstract of the stat. of 43 Eliz. c. 2, is inserted in Perry on Trusts, § 691 n., and for cases on, see § 694 n.

For the application of the statute in Pennsylvania, see *Vidal v. Girard*, 2 How. 127 ; Ohio—*Perin v. Carey*, 24 How. 465 ; Maryland—*Beatty v. Kurtz*, 2 Pet. 566 ; 2 Cranch C. Ct. 699 ; *Barnes v. Barnes*, 3 Id. 269.

As to the operation of the statute, see 4 Abb. Nat. Dig. 329, "Uses."

Statutes of Uses not in force in Ohio : *Helfenstine v. Garrard*, 7 Ohio (1 Pt.) 275. Nor Mortmain statute : *Am. Bib. Soc. v. Marshall*, 15 Ohio St. R. 544. See Tiffany & Bullard on Trusts 781 ; note 11, ante ; Shelford on Mortmain, Bouv. Dic., title *Mortmain*. Equity will support a grant for public, pious or charitable uses, even if no donee be appointed : *Bryant v. McCandless*, 7 Ohio (Pt. 2) 135 ; *Brown v. Manning*, 6 Ohio 298 ; *Williams v. Presb. Soc.*, 1 Ohio St. 478 ; *Board Ed. v. Edson*, 18 Id. 221 ; *Carder v. Comm'rs.*, 16 Id. 353 ; *McIntire School v. Zanesville*, 9 Ohio 203 ; s. c. 17 Ohio St. 352 ; *Ohio v. Guilford*, 18 Ohio 500 ; *Zanesville, C. and M. Co. v. Zanesville*, 20 Id. 483 ; *Urmey v. Wooden*, 1 Ohio St. 160 ; *Hunt v. Freeman*, 1 Ohio 490.

Trusts may be created as at common law ; trust attached by parol : *Fleming v. Donahue*, 5 Ohio 255 ; *Williams v. Van Tuyl*, 2 Ohio St. 336 ; *Miller v. Stokely*, 5 Id. 194 ; *Hathaway v. S. M. and P. Railroad*, 2 West. Law Monthly 481.

⁴⁹ CORPORATION TRUSTEE.—See Ang. & Ames Corp. Ch. v. (9 ed.) ; Perry on Trusts, § 45 ; Dillon Munic. Corp., § 437-444 ; *Vidal v. Girard*, 2 How. 127 ; *Matter of How.*, 1 Paige 214 ; *Perin v. Carey*, 24 How. 465 ; *Girard v. Philada.*, 2 Wallace, Jr., C. C. 301 ; *McDonough Will Case*, 15 How. 367 ; 8 La. Ann. 171 ; 2 Id. 898 ; 29 Mo. 543. In *Watson v. Jones*, 13 Wallace, it is said a grantor "may dedicate property by way of trust to the purpose of sustaining, supporting and propagating definite religious doctrines." So in *Petty v. Tooker*, 21 N. Y. 267.

By the General Corporation Act of Congress of May 5th, 1870, religious societies may in the District of Columbia elect and supply trustees, and by proper record secure to them corporate powers to hold in trust land not exceeding one acre, which reverts on dissolution of congregation : Stat. 99.

IV. By an incorporated society, either by special act of incorporation, or under a general act securing corporate powers; or,

By Act June 17th, 1870, such property is exempt from tax : Stat. 153.

By Act of Feb. 21st, 1871, Congress created a district legislature, but no provision has been made by it as to churches : Stat. 419.

The laws of Maryland are in force in the District of Columbia, including many acts of the British Parliament, except so far as such laws have been repealed or modified by Congress. The 34th sec. of the declaration of rights of Maryland of 1776, prohibits certain devises, &c. : *Murphy v. Dallam*, 1 Bland 529. The Act of Congress of July 25th, 1866, repeals this, but adds a proviso, "That in case of gifts and devises the same shall be made at least one calendar month before the death of the donor or testator : " Law D. C. in Force 1868, p. 79. This probably operates on gifts and devises made under the Trustee Act of June 17th, 1844, 5 stat. 679, and under General Corporation Act of May 5th, 1870 : Stat. 99.

The Statute of Hen. VIII. forbids devises of land to corporations, but devises for charity were held good as "appointments : " *Perry Tr.*, § 739 ; *Duke Charitable Uses* 84 ; *Bridgman's Duke* 355 ; *Dillon Munic. Corp.*, § 428 ; *Damon's Case*, Moore 822 ; *Smith v. Stowell*, 1 Ch. Ca. 195 ; *Collenson's Case*, Hob. 136 ; *Att'y.-Gen. v. Combe*, 2 Ch. C. 18 ; *Flood's Case*, Hob. 136 ; *Christ's College*, 1 W. Blacks. 90 ; *Att'y.-Gen. v. Bowyer*, 3 Vesey, Jr., 714 ; 1 Dru. & War. 308 ; *Mills v. Farmer*, 1 Mer. 55 ; *Att'y.-Gen. v. Rye*, 2 Vern. 453 ; *Rivet's Case*, Moore 890 ; *Att'y. v. Burdett*, 2 Vern. 755 ; *Christ's Hospital v. Haines*, *Bridgman's Duke* 371 ; *Tuffnell v. Page*, 2 Atk. 37 ; *Fay v. Slaughter*, Pr. Ch. 16 ; *Kenson's Case*, Hob. 136. The authority of these cases has recently been impaired : *Moggridge v. Thackwell*, 7 Ves. 87 ; *James v. Hooper*, Pr. Ch. 389 ; *Att'y.-Gen. v. Bain*, Pr. Ch. 271 ; *Adlington v. Cann*, 3 Atk. 141. This doctrine never prevailed in America : *Harvard College v. Soc. for Prom. Ed.*, 3 Gray 283. The stat. 27 Hen. VIII., relative to charitable uses adopted in Vermont, and generally in New England States : *Society, &c., v. Hartland*, 2 Paine 536. In South Carolina, *Henderson v. Gribbin*, 5 Peters 151.

TRUSTEES WITH QUASI CORPORATE POWERS.—See "An act concerning conveyances or devises of places of public worship in the District of Columbia," passed by Congress, and approved June 17th, 1844.

This authorizes conveyance or devise to trustees of limited amount of land for use of religious congregations for worship, instruction, burial-ground or residence of minister. The court supplies trustees : *Laws in Force*, D. C., 1868, p. 77, 5 U. S. Stat. at Large 679.

OHIO.—In Ohio the acts which give a *quasi* corporate capacity and perpetual succession to trustees, are Act of January 7th, 1817, 2 Chase 1013 ; February 5th, 1819, Id. 1066 ; January 15th, 1821, Id. 1175 ; January 3d, 1825, Id. 1460 ; February 26th, 1849, 2 Curwen 1473 ; March 23d, 1850, 2 Id. 1554. The first three of these acts have been repealed, saving vested rights. They and the Act of 1825 have been construed in *M. E. Church v. Wood*, Wright R. 12 ; *Morgan v. Leslie*, Id. 144 ; *Price v. M. E. Church*, 4 Ohio 541 ; *Methodist Church v. Wood*, 5 Id. 283 ; *Keyser v. Stansifer*, 6 Id. 363 ; *Presbyterian Society v. Smithers*, 12 Ohio St. 248 ; *Devoss v. Gray*, 22 Id. 160.

There were many congregations for whom trustees under the Act of January 3d, 1825, held property in trust. This act provided that property so held "shall descend * * in perpetual succession in trust to such trustee or trustees as shall from

V. By an incorporated society, for the use of which property may be held by unincorporated trustees; or,

time to time be elected or appointed by any religious society, according to the rules and regulations of such society respectively."

There were congregations whose members desired to determine, *in conveyances to trustees, the manner in which successors shall be appointed, and of whom they should consist.*

The Act of March 23d 1850, grew out of a controversy on what was called "The Deacon question," in the Reformed Presbyterian Church, or as it is commonly called, the Covenantor Church. In 1841, the Rev. J. M. Wilson, in a publication entitled "The Deacon," insisted that the title to church property shall be vested in the "officers," that the revenues shall be controlled by the "Eldership," and that all the higher courts in the courts should *rectify* acts of maladministration in this business "according to their regular gradation." The Act of February 26th, 1849, 2 Curwen 1473, authorized any Presbyterian society to elect deacons as trustees of church property. John Nightingale wrote a pamphlet, published in New York in 1845, entitled "The Scriptural Deacon," &c., in "defence of the principle that congregations in their congregational capacity have a right to the management and control of * * their temporal concerns," and "in opposition to the * * principle * * that all this is official business belonging to the ministers, elders and deacons united in consistory."

This subject is discussed in a periodical called "The Covenantor," published in Philadelphia, vol. 13, pp. 12, 142, 202, 244, 294 (A. D. 1857-8), and in vol. 14, p. 180 (1859); and see Buck. Mass. Ecc. L., 114-117, and notes, where reference is made to discussions. This controversy gave rise to divisions of particular churches into separate congregations, all, however, recognising the same Synod and General Assembly, which latter and highest legislative body of the church, made no law on the subject.

And in the cases where conveyances had already made such provision it was desired to avoid any question as to the right of a congregation (by virtue of the Act of 1825) to change the mode of appointment. In view of all this, Mr. Lawrence, of Logan county, then in the Senate of Ohio, procured the passage of the Act of March 23d 1850. This act accomplishes these purposes.

It may be that even without it, effect would be given to a deed of trust which provided a mode of perpetuating trustees. If so, such deed would not secure succession by virtue of the Act of 1825, but on general equity principles: *Morgan v. Leslie*, Wright 144; *Devoss v. Gray*, 22 Ohio St. 160. This proceeds on the theory that the Act of 1825 is not in restraint of common-law rights, but is permissive: *Smith v. Bonhoff*, 2 Gibbs, Michigan 115; Buck 114.

The Act of 1850 is in affirmance of common-law rights. It was not designed to give courts power to appoint trustees in *all* cases where no mode of perpetuating trustees is provided in trust-deed; but simply in cases to which the Act of 1825 did not apply.

As to corporate capacity of trustees, &c.: *Church v. Wood*, Wright 12; s. c., 5 Ohio 283; *Morgan v. Leslie*, Wright 144; *Price v. Church*, 4 Ohio 515; *Keyser v. Stansifer*, Wright 323; s. c., 6 Ohio 363; *Presby. Soc. v. Smithers*, 12 Ohio St. 248; *Devoss v. Gray*, 22 Id. 160. Does the Act of 1825 prohibit a society from acquiring more than twenty acres? *Morgan v. Leslie*, Wright 145. But see *Smith*

VI. By an incorporated society, for the use of which property may be held by trustees having a corporate or *quasi* corporate capacity ; or,

VII. By *two* corporations ; *one* of the religious society, with power to employ a pastor, collect dues, acquire property, &c., and *another* with power to acquire, manage and dispose of property in trust for the use of the religious society, &c.⁵⁰

The utility of, or reason or necessity for, these dual corporations or duplex arrangements, may be found in the fact that each performs a different office, requiring a somewhat different capacity ; and by this means, too, property may be held and perpetually devoted to religious purposes without danger of being squandered by those for whose use it is held, and without risk of being seized

v. Bonhoff, 2 Gibbs, Mich. 115 ; *Fulton v. Mehrenfeld*, 8 Ohio St. 440 ; *Hathawa v. S. M. & P. R. R.*, 2 West. Law Monthly 481 ; *Devoss v. Gray*, 22 Ohio St. 160. These show that common law trustees may exist. The title to Catholic Church property is held by a bishop, under a common-law trust. This act was passed because at law a fee did not pass to successors of trustees named in a deed, though equity would supply the defect.

The effect generally of the statutes which give a *quasi* corporate capacity to trustees is to vest the trust estate in the new trustee when qualified, without a conveyance : Trustees Act 1850, 12 & 13 Vict. ch. 74, §§ 33-36 ; Mass. Gen. Stat., c. 100, § 9 ; *Parker v. Converse*, 5 Gray 341 ; *Re Fisher's Will*, 1 W. R. 505 ; *Smith v. Smith*, 3 Dr. 72.

Independently of statute, an equity court can, in the absence of provision in the trust-deed, supply trustees for which purpose decrees usually direct a conveyance : *O'Keefe v. Calthorpe*, 1 Atk. 18.

⁵⁰ The New York statute of 1784, for the incorporation of religious societies, recognises three separate bodies as existing in the incorporation of a Christian church ; the office-bearers and communicants ; the regular attendants who are electors in the corporation ; and the trustees who control the temporalities : *Lawyer v. Clipperly*, 7 Paige 281 ; *Parish of Bellport v. Tooker*, 29 Barb. 256 ; *Robertson v. Bullions*, 1 Kernan 243 ; *Bowyer v. Irish Presby. Cong.*, 6 Bosw. 265 ; *Wheaton v. Gales*, 18 N. Y. 395. Under this act the members of the society and not its trustees are incorporated.

Buck says : " The distinct action of the church and society is still recognised among the Baptists and other Congregationalists : " 49 n. ; *Leicester v. Fitchburg*, 7 Allen 90 ; *Baker v. Fales*, 16 Mass. 488 ; *contra*, Dr. Lamson in 17 Examiner 177 ; Buck 68 n. See note 56, *post*. The relations of the church and society to each other : *Burr v. First Parish*, 9 Mass. 297 ; *Bisbee v. Evans*, 4 Me. (Greenl.) 375 ; *Germ. Ref. D. Ch. v. Busche*, 5 Sandf. 666 ; *M. E. Church v. Wood*, 5 Ohio 283 ; *Miller v. Bap. Ch.*, 1 Harr. 251 ; Tyler, § 525 ; *Bap. Ch. v. Witherill*, 3 Paige 296 ; Tyler, § 100 ; *Voorhes v. Presby. Ch.*, 8 Barb. 135 ; Tyler, § 208 ; *Robertson v. Bullions*, 9 Barb. 64. See *People v. Steele*, 2 Id. 397 ; *Miller v. Gamble*, 2 Denio 492 ; Tyler, § 280. Threefold aspect : *Miller v. Bap. Ch.*, 1 Harris 251 ; Tyler, § 525. See Clinton's N. Y. Dig. 2883.

or sold on execution⁵¹ or legal process for liabilities incurred by their action or agency.

To secure either the religious or temporal objects of a church or religious society, some organization is manifestly necessary.

When therefore a suitable number of persons desire such organization, among the inquiries which will arise are these:—

I. Is the organization, the mode thereof or its object, unaided or aided, or restricted or prohibited⁵² by constitutional or statutory or common-law or equity principles?

⁵¹ 2 Washburn's Real Prop. 183; *Norris v. Johnson*, 5 Penna. St. 287; *Vaux v. Parke*, 7 W. & S. 19; Bush's Appeal 33 Penna. St. 85. As to New York, Wisconsin and New Hampshire, see *Foote v. Colvin*, 3 Johns. 216; *Jackson v. Walker*, 4 Wend. 462; *Lyford v. Thurston*, 16 N. H. 408; Wis. Rev. Stat. ch. 134, § 37; *Shryock v. Waggoner*, 28 Penna. St. 430.

⁵² UNAIDED BY LAW. See note 48 *ante*. There is probably no state of the American Union which has not made some statutory provision in aid of churches.

AIDED BY LAW.—The law may afford aid by giving perpetual succession to trustees. See note preceding. It may authorize the creation of corporations by proper proceedings under general laws; or the legislature may, where there is no constitutional restriction, grant special charters.

Corporations under General Law.—The Act of Congress of May 5th 1870 authorizes the creation of corporations in the District of Columbia by proper proceedings of a congregation: Stat. 99. See note 49, *ante*.

As to corporations by general law of a territory, see Acts July 1st 1862, 12 Stat. 501, and Act March 2d 1867, 14 Stat. 426, and *post* under "Special Charters."

Hon. Geo. Q. Cannon, delegate in Congress from Utah, writing from Salt Lake City, May 2d 1873, says:

"The [Mormon] temple at this city has been held as individual property since the passage of the law of July 2d 1862 which prescribed \$50,000 as the extent of the value of property which churches in the territories were to hold. * * The passage of that law compelled the church to devise other methods of holding its property than in a church capacity."

No provision is made for corporations under any general law in Arkansas, Rhode Island, West Virginia, South Carolina and Nevada: Tyler, §§ 799, 817. In Virginia the Constitution prior to that now in force prohibited religious corporations: *Id.* 725.

As to OHIO—General statutes prior to Constitution of 1851, by which, without special act of incorporation, corporations were created by causing record to be made. These relate only to associated religious societies.

These are, Acts of March 12th 1844, 2 Curw. 1056; February 18th 1848, *Id.* 1408, March 22d 1851; *Id.* 1668.

As to these, see also Swan's Rev. Stat. 228, 229, 230; Swan & Critchfield 305, 306; 1 Curw. 234 n., 1408; 2 *Id.* 1056, 1554.

These acts are in force as to corporations created under them, which have not accepted other statutes. How far these may otherwise remain in force, see *Bank v. Wright*, 6 Ohio St. R. 318.

This case would seem to indicate that these acts are in force. In opposition to
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II. Is the organization to be "in itself a whole, separate

this view, it may be said that "the Act of May 1st 1852 provides, generally, for the creation of all corporations.

It is a rule that "a subsequent statute *revising* the *whole* subject-matter of the former act, and *evidently intended* as a *substitute* for it, although it contains no express words to that effect, operate to repeal the former." 1 Curw. Stat. 17, article on Statutes.

But repeals by implication are not favored, and other acts as that of 1825, in relation to churches, remain in force. The better opinion is that the acts under consideration also remain in force.

The title of the Act of March 12th 1844 is "An act to provide for the appointment of trustees for the control of Associated Religious Societies, and to define their powers and duties."

It also provides a mode of securing corporate powers by a record duly made. The title of an act may be considered as explanatory of its object: 7 Ohio (Pt. 1) 86; 12 Ohio St. 171; 1 Ohio 225; 11 Id. 10.

It would seem, therefore, that this act does not apply to the Independent or Congregational churches.

GENERAL CORPORATION ACT MAY 1ST 1852 AND AMENDMENTS.—For these see Swan's Rev. Stat. 197; Swan & C. 274; 3 Curw. 1877-2097; 4 Id. 2582, 3029-3196; Acts April 17th 1854, 4 Curw., Index 23; January 26th 1865, 62 Ohio Laws 4; April 15th 1867, 64 Id. 153; February 25th 1869, 66 Id. 14; April 2d 1870, 67 Id. 30.

These provide for the organization of church corporations by proper proceedings of which a record is to be made by the county recorder.

The Act of 1870 authorizes the consolidation of two societies of the same faith.

A conveyance to trustees enures to the benefit of the society: *Second Cong. Soc. v. Waring*, 24 Pick. 304; *Bundy v. Birdsall*, 29 Barb. 31; *Shannon v. Frost*, 3 B. Monroe 258; *Curd v. Wallace*, 7 Dana 195. See provisions in force as to all corporations.

"An act authorizing incorporated companies to change their name," passed January 12th 1853, 51 Stat. 293; 1 Swan & C.; Stat. 317, 3 Curw. 2097.

Sect. 14 of "An act instituting proceedings against corporations not possessing banking powers and the visitatorial powers of courts, and to provide for the regulation of corporations generally," passed March 7th 1842, 40 Stat. 67; 1 Swan & C. 363; 1 Curw. 907; 2 Id. 1153. See also Act March 12th 1845, 43 Vol. Stat. 95; 2 Curw. 1153; sect. 5 of Act of March 21st 1850 limiting said sect. 14, 48 Stat. 90; 2 Curw. 1571.

"An act in relation to judicial proceedings in favor of and against dissolved corporations," passed March 21st 1850, 45 Stat. 90; 1 Swan & C. Stat. 365; *Stetson v. City Bank*, 2 Ohio St. 167. If a devise be made to, or a purchase for an unincorporated society which is represented by a corporation, it will at once vest in it: *Thomas v. Stevens*, 4 Johns. Ch. 607; *Hornbeck v. Am. Bible Soc.*, 2 Sandf. Ch. 133, 271; *Town of Paulet v. Clarke*, 9 Cranch 292; *Mayor of Reading v. Lane*, Duke on Charitable Uses 81; 13 S. & R. 92; *Smith v. Hueston*, 6 Ohio 101; *Potter v. Chapin*, 6 Paige 649; *State v. Piatt*, 15 Ohio 33; *Trustees v. Zanesville C. and M. Co.*, 9 Ohio 287; *First Parish v. Cole*, 3 Pick. 232; *Banks v. Phelan*, 4 Barb. 80; *Burr v. Smith*, 7 Vermont 241; *Johnson v. Mayne*, 4 Iowa 181; *African Soc. v. Varrick*, 13 Johns. 38; *Preachers' Aid Soc. v. Rich*, 45 Me.

and independent, at liberty to form [and change] its own

552; *Vansant v. Roberts*, 3 Md. 119; *Smith v. Wyckoff*, 3 Sandf. Ch. 77; *Minot v. B. A. & F. School*, 7 Metc. 416; *President, &c. v. Norwood*, 1 Busbee's Eq. 65; 2 Kent's Com. 292; 1 Phil. Ev. 522-3; 1 Story's Eq. Jurisp. §§ 180, 1171; *Wright v. Meth. Ch.*, 1 Hoff. Ch. 202; 2 How. 187; *Bridgeman's Duke on Charitable Uses* 355, &c.

In *Carder v. Commissioners of Fayette*, 16 Ohio St. 369, it is said that in cases "of devises to *unincorporated churches*, to *parishioners*, and to the *poor of a hospital*, the title has always been held to vest in the *parson*, the *churchwardens*, and the *Mayor and Burgesses* respectively, for the use of the beneficiaries intended:" *Refil. D. Ch v. Veeder*, 4 Wend. 494; *D. Ch. v. Mott*, 7 Paige 77; *Baptist Ch. v. Withereil*, 3 Id. 296; *Trustees v. Yates*, Hoff. 142; *Voorheis v. Presby. Ch.*, 8 Barb. 135.

SPECIAL CHARTERS.—*Congress.*—By Act of May 24th 1828 Congress incorporated the Sisters of Charity of St. Joseph and the Sisters of the Visitation of Georgetown, D. C.: 6 Stat. 383.

By Act January 31st 1804 Congress incorporated the Directors of the Columbian Library Co.: 6 Stat. 51.

By Act May 4th 1858 Congress incorporated the Benevolent Christian Association of Washington: Laws D. C. in Force 1868, p. 104, Stat.

The Act of March 2d 1867 declares territorial legislatures shall not "grant private charters or special privileges, but may by general incorporation acts permit persons to associate themselves together as bodies corporate for mining, manufacturing and other *industrial* pursuits:" 14 Stat. 426; 2 Brightly 543. Whether this *prohibits* private charters, or corporations by general territorial law, for *religious* purposes, subject to the limitations of the Act of July 1st 1862 (12 Stat. 501), is a question to be considered. It is probable the Act of 1862 is left in force which recognises the right of a territorial legislature to create religious corporations under general laws or by special charter.

AS TO OHIO.—From the organization of the state special acts of incorporation were passed until prohibited by the Constitution of 1851.

By Act February 7th 1861 all not accepted are repealed: 58 Ohio Laws 12.

There are general acts for the regulation of societies incorporated by special act of incorporation. These embrace Acts of March 5th 1836, 2 Curwen 235; February 28th 1846, Id. 1255; February 26th 1849, Id. 1473; March 23d 1850, Id. 1554. These acts are in force as to corporations created under them prior to the Constitution of 1851, but such corporations may accept the provisions of other general corporation statutes. See Act May 1st 1852, § 71, 3 Curw. 1877, and § 3, Act February 28th 1846, 2 Id. 1256. As to acts above, see 1 Curw. 234 note; 2 Id. 1056, 1408; 3 Id. 1877; Swan's Rev. Stat. 227; Swan & C. Stat. 305.

Corporations are public or private. Private corporations in England are divided into *ecclesiastical* and *lay—ecclesiastical* are those organized for the advancement of religion. They are either *sole*, as a bishop or parson, or *aggregate*, as were formerly the abbot and monks: Angell & Ames Corp. § 36, 9th ed.; *Terrett v. Taylor*, 9 Cranch 43; Ayliffe's Civil Law 196. Prior to the Reformation and the dissolution of monasteries, ecclesiastical corporations were divided into three classes. The first consisted of the secular clergy, the second of monks, and the third were religious communities whose members lived together

creed, and looking to others for counsel and social intercourse only? ⁵³

⁵³ In independent congregations generally a majority control the use of property, and a change of religious tenets does not affect the right of the majority unless otherwise clearly provided by special trust: *Keyser v. Stansifer*, 6 Ohio 363; s. c., *Wright* 323; *Hadden v. Chorn*, 8 B. Monroe 76; *Baptist Church v. Witherell*, 3 Paige 296; *Sawyer v. Clepperly*, 7 Id. 281; *Swedenborg Church v. Showers*, 16 N. J. Eq. (1 C. E. Green) 453; *Trustees v. Seaford*, 1 Dev. Eq. 453; *Brendle v. Germ. Ref. Cong.*, 33 Pa. St. 418; *Att'y.-Gen v. Clergy Soc.*, 8 Rich. Eq. 109; *Brent v. Sandwich*, 9 Mass. 289; *Avery v. Tyringham*, 3 Id. 182; *Sheldon v. Easton*, 24 Pick. 287; *Parker v. May*, 5 Cush. 336; *Hollis v. Pearpont*, 7 Metc. 499; *Wiswell v. First Cong. Soc.*, 14 Ohio St. 44; *Brown v. Lutheran Ch.*, 23 Pa. St. 498; *Perry Trusts*, § 734; *Rector v. Crawford*, 5 Robert. 100; *Buck Mass. Ecc. L.* 174; *Trustees v. King*, 12 Mass. 537; *Miller v. Gable*, 2 Denio 535; *Com. v. Fisk*, 8 Metc. 238; *Tudor on Char. Uses*, ch. 6; *Dublin Case*, 38 N. H. 460; 7 *Examiner* 64; 20 Id. 240; *Sp. Pilgrims* 581; *Att'y.-Gen. v. Props.*, 3 Gray 161; *Robertson v. Bullions*, 9 Barb. 64; *Bellport v. Tooker*, 29 Id. 257; s. c., 21 N. Y. (7 Smith) 267; *Wiswell v. Green*, Cincin. Sup. Court, 1860. If the association be voluntary, its articles of association may determine the control, or if incorporated, the act of incorporation may determine: *Watson v. Jones*, 13 Wallace. Where charter pursued no remedy for the dissatisfied: *Ebaugh v. Hendel*, 5 Watts 53; *Field v. Field*, 9 Wend. 400.

"Courts will interpose to prevent the diversion of funds appropriated to promote the teaching of particular religious doctrines," even if sanctioned by a majority of a church: *Angell & A. Corp.*, § 194 n.; *Watson v. Jones*, 13 Wallace; *Gable v. Miller*, 10 Paige 627; *Miller v. Gable*, 2 Denio 492; *People v. Steele*, 2 Barb. 397; *Bowden v. McLeod*, 1 Edw. 588; *Kinskern v. Lutheran Church*, 1 Sandf. Ch. 439; *Perry Trusts*, § 734; *Attorney-General v. Munro*, 2 De G. & Sm. 122; *Miligan v. Mitchell*, 3 M. & C. 73; *Foley v. Wontner*, 2 J. & W. 247; *Cragdalke v. Aikman*, 1 Dow. P. C. 1; *Broom v. Summers*, 11 Sim. 357; *Attorney-General v. Murdock*, 7 Hare 445; 1 De G. M. & G. 86; *Attorney-General v. Rochester*, 5 Id. 797. And so of church property.

An independent society may have property devoted for specified doctrines, which a majority cannot pervert: *Heckman v. Mees*, 16 Ohio 583; *Whetman v. Lex*, 17 S. & R. 90; *Moggridge v. Thackwell*, 7 Ves. Ch. R. 36; *Wood arguendo* in *Todd v. Green*; *Presby. Ch. Case*, Sup. Court, Penna., 1839; *Princeton v. Adams*, 10 Cush. 128; *Hunt v. Perley*, 34 Maine 32; *Watson v. Jones*, 13 Wallace; *Cammerer v. Lutheran Ch.*, 2 Sandf. Ch. 186; *Hullman v. Honcomp*, 5 Ohio St. 237; *Wiswell v. First Cong. Soc.*, 14 Id. 31; 5 Ohio 205; 8 Id. 552; 9 Id. 203.

A particular congregation of the associated or quasi associated churches will be protected: *Earle v. Wood*, 8 Cush. 430; *Hendrickson v. Decow*, 1 Saxton Ch. R. 577; 30 *Examiner* 237; 52 Id. 321; *Dexter v. Gardner*, 7 Allen 243; *Buck Mass. Ecc. L.* 166; *Hayden v. Stoughton*, 5 Pick. 528; *Tainter v. Clark*, 5 Allen 66; *Austin v. Cambridgeport*, 21 Pick. 215; *Guild v. Richards*, 16 Gray 1860; *People v. Steele*,

in common to promote the objects of the church, and this class included religious missionaries under the authority of the bishop: *Angell & Ames*, § 86; 2 *Domat's Civil Law* 452. Corporations have been created in every one of the United States since the Revolution for churches. "The Church of England, in its aggregate

III. Is the organization to be thus separate and independent,

2 Barb. N. Y. 397 ; *App. v. Lutheran Cong.*, 6 Penna. St. 201 ; *Hunt v. Perley*, 34 Maine 32.

For forms of trust deeds, see these cases and *Smith v. Bonhoff*, 2 Gibbs Mich. 115 ; Buck Mass. Ecc. L. 126 ; *Attorney-General v. Fed. Street Meeting-House*, 3 Gray 1 ; *Lang v. Parvis*, 5 Times Rep. 807 (Eng. 1860) ; *Attorney-General v. Gould*, 3 Id. 495 ; *McBride v. Porter*, 17 Iowa 203 ; *Smith v. Nelson*, 18 Vt. 511 ; *Howard v. Hayward*, 10 Metc. 408.

The legislature and the courts have in some instances gone far in sanctioning a change or perversion of trusts : Buck 128 ; *Pine Street Soc. v. Weld*, Gray's Rep., March 1858 ; *Turpin v. Locket*, 6 Call 113 ; *Selden v. Overseers*, 11 Leigh 127 ; *Terret v. Taylor*, 9 Cranch 43 ; *Gartin v. Penick*, Ky. Ct. App. 1870 ; 9 Am. Law Reg. N. S. 212, 224, citing *Attorney-General v. Bunce*, Law Rep. 6 Eq. 563. See *State v. Bryce*, 7 Ohio 414 ; 4 Wheat. 518 ; *Perry Tr.*, § 30.

description, is not by the common law a corporation, and cannot receive a donation *eo nomine*, but a grant to a church of a particular place vests the fee in the parson and his successors by the common law :” Angell & Ames, § 37 ; *Pawlet v. Clark*, 9 Cranch 294.

In England and the states of this Union which adopted the system of parishes, the minister is a corporation sole : *Brunswick v. Dunning*, 7 Mass. 447 ; *Weston v. Hunt*, 2 Id. 500 ; *Cheever v. Pierson*, 16 Pick. 272 ; *Overseers v. Sears*, 22 Id. 122 ; *Taylor v. Edson*, 4 Cush. 522 ; *Bucksport v. Spofford*, 3 Fairfd. 487. The corporations which in England are called ecclesiastical, are in the United States designated as *religious*, as in the New York statute of 1784, providing for the incorporation of religious societies : 2 Kent 221.

RESTRICTED BY LAW.—*Congress*.—The Act of July 25th 1866 requires gifts and devises to be made at least one calendar month before the death of the donor or testator : Laws D. C. in Force, 1868, p. 79. See note 49, *ante*. As to restrictions in territories, see this note, *ante*, under “special charters.”

Ohio.—The Act of January 3d 1825, 2 Chase Stat. 1460, gives perpetual succession to trustees for lands not exceeding twenty acres. It contains no negative on or repeal of the common-law right to hold any amount of land. See note 48–49, *ante*.

In New York, religious corporations formed under the *General Act* of April 5th 1813, are not denominational : *Petty v. Tooker*, 21 N. Y. R. 267, but the deed to such corporation may, by express provision, devote property to the use of a particular faith. The Kentucky statute provides for the alternate use of property in case of a church schism or division : 9 Am. Law Reg. N. S. 220 n.

As to Mortmain Statutes, see note 11, *ante*. Cannot be evaded by intervention of trustees : Hill Trustees 52 ; Lewin Trusts 36 ; Angell & Ames on Corp. (9th ed.) ch. v., §§ 49, 148, 151. As to wills : ch. v., §§ 177, 179 ; Dillon Munic. Corp. §§ 428, 432 ; 1 Jarman on Wills 200, 224 ; Tudor on Charities 93, 101 ; 2 Redfield on Wills 508, 516, 2d ed. ; *Perin v. Carey*, 24 How. 465 ; Shelford on Mortmain ; Perry Trusts 715 ; *McLean v. Wade*, 41 Penna. St. 266 ; *Levy v. Levy*, 33 N. Y. 114 ; *Harris v. Slaght*, 46 Barb. 470 ; N. Y. Stat. 1848, c. 319, and Act of 1860.

In the territories of the United States, the Act of July 1st 1862, 12 Stat. 501, 2 Brightly 543, prohibits any corporation or association for religious or charitable

ent, but with property devoted to its use for the purpose of

purposes to acquire real estate of greater value than \$50,000, under penalty of escheat saving prior vested rights.

PROHIBITED BY LAW.—A grant even for a purpose called charitable will not be sustained, if in violation of written law or public policy: *Thrupp v. Collett*, 26 Beav. 125; *Russell v. Jackson*, 10 Hare 204; *Jackson v. Phillips*, 14 Allen 570; *Perry Trusts*, § 21 n.; *Miller v. Lerch*, 1 Wall. Jr., C. C. 210. It would be a work of much research to note the statutes in England and in the United States, and decisions thereon which at one time interfered with the propagation of some forms of religious faith, and denied rights to those entertaining them: *Perry Trusts*, § 715; *De Theurnunes v. De Bonnevall*, 5 Russ. 288; *Da Costa v. De Pas*, Amb. 228; 2 Swan 487 n.; 1 Dick. 258; *Finley v. Hunter*, 2 Strob. Eq. 218; *Johnson v. Clarkson*, 3 Rich. Eq. 305; *Lusk v. Lewis*, 32 Miss. 297.

In England, gifts to superstitious uses were held to be void as against public policy. But in this country all religious doctrines are equally protected: *Meth. Ch. v. Remington*, 1 Watts 218; *Gass v. Wilhite*, 2 Dana 170; *Magill v. Brown*, Brightly 373.

In New York, by Statute of 1784, all corporations are prohibited from taking lands in trust for charity, except for the purposes for which the corporation was created: *Tucker v. St. Clement*, 3 Sandf. 242; but church property may be devoted to the purposes of a sect by express provision in the title-deeds.

The Stat. of Wills (2 R. S. 57, § 3) prohibits devises to a religious corporation unless expressly authorized by its charter to receive devises: *Ayers v. M. E. Ch.*, 3 Sandf. 351; *Jackson v. Hammond*, 3 Caines C. 337.

In *Ohio*, there was "An act in relation to conveyances and devises of property for religious purposes," passed April 14th 1857, 4 Curw. 2936, which provided that no grant for "purposes of religious worship" * * * or a cemetery connected therewith shall vest any right * * * unless the same shall be made to a corporation."

This act, designed to defeat the mode of taking titles adopted by the Catholic church—to the archbishop—was repealed February 17th 1858: 4 Curw. 3026.

Massachusetts.—See Buck Mass. Eccl. L. 111; 13 Gray 400; Mass. House Doc., Nos. 16 and 18.

Missouri.—The 12th section of the Bill of Rights of the Missouri Constitution provides, "That every gift, sale or devise of land to any minister, public teacher, or preacher of the gospel, as such, or to any religious sect, order or denomination, or to or for the support, use or benefit of, or in trust for any minister, public teacher, or preacher of the gospel, as such, or any religious sect, order, denomination; and every gift or sale of goods or chattels to go in succession, or to take place after the death of the seller or donor, to or for such support, use or benefit; and also every devise of goods or chattels, to or for the support, use or benefit of any minister, public teacher or preacher of the gospel, as such, or any religious sect, order or denomination, shall be void; except always any gift, sale or devise of land to a church, religious society or congregation, or to any person or persons in trust for the use of a church, religious society or congregation, whether incorporated or not, for the uses and purposes and within the limitations of the next preceding clause of this article."

In the Missouri House of Representatives, February 6th 1873, Hon. Stilson Hutchins, on the question of calling a constitutional convention, in an able speech

propagating a *particular* and *defined* unchangeable religious faith?⁵⁴

IV. Is the organization to be in connection with, and subject to the authority of some higher ecclesiastical body?⁵⁵

against this section said: "Now what are the limitations of the preceding section? That no religious society or congregation can hold a dollar's worth of property, except as a body corporate, and then only to the extent in connection with a house of worship or a parsonage, of five acres in the country, or one acre in the town or city.

"It is well known that that provision applied only to Catholic churches and societies, because that religious order was the only one which placed its landed or proprietary interests in charge of the bishop or hierarchy, 'to go in succession,' and become the absolute property of the church. All Protestant churches held their possessions by a different tenure, through boards of trustees or similar bodies, while the Catholics vested theirs in the bishops of their different dioceses.

"To show that I am correct in my conclusions, let me quote from a speech of Mr. Drake, in reply to the accusation:"

"'This clause was inserted, I am free to admit, as charged, because it was not thought wise to give free rein to those whose only desire seemed to be to aid in sustaining an ecclesiastical establishment, the principal element of whose strength is its wealth; which is, in fact, a vast money-making machine; and whose wealth, swelling in amount day by day, and managed by a single undisputed will, evermore works to one sole end of building up and perpetuating the power of a hierarchy, which, through all its ranks, owes a sworn and unqualified allegiance to its absolute head in *Rome*, and whose organization, instincts and purposes are not in alliance with democratic liberty, or in sympathy with the great spirit of republican institutions.'"

And it is said this section was taken from the Constitution prepared by Henry Winter Davis for Maryland.

Texas.—*Blair v. Odin*, 3 Texas 299.

New York.—By the Act of 1813, in New York, church property could only be held by trustees duly elected; this act, designed to prevent Catholic bishops from holding church property, was changed by Act of 1863. See discussions on Catholic property question, New York-Senate, 1855.

Connecticut.—For law of 1855, see 9 Church Review 305; Buck 111.

In Maryland, the 34th section of Declaration of Rights of 1776 prohibited certain devises.

As to perpetuities, see note 48, *ante*.

⁵⁴ The nature of a trust for religious purposes may be inferred from parol evidence of the religious tenets of the donor of a fund: *Robertson v. Bullions*, 1 Kern. 243; Buck Ecc. L., Mass. 174; *Feoffees v. Andrews*, 8 Metc. 587; *Attorney-General v. Bunce*, Law Rep. 6 Eq. 563, cited 9 Am. Law Reg. N. S. 224 n.; *Bowden v. McLeod*, 1 Edw. 588; *First Const. Ch. v. Cong. Socy.*, 23 Iowa 567.

⁵⁵ Where it is apparent from the charter of a church, that it is in full connection with a synodical body, and not independent of it as a congregation, those who secede, whether a majority or not, lose all privileges and right to corporate property, and those who remain hold them: *Gable v. Miller*, 10 Paige 627. And where property is devoted under a trust to a particular religious faith, or form of church government, those who adhere, however small in numbers, are entitled to its use as against those who, by a separate organization, abandon the doctrines or church government: *Harmon v. Dreher*, 1 Speer Eq. 87; *German Ref. Ch. v.*

V. In either of these cases which of the SEVEN different classes of organization above mentioned is it proposed to adopt?

Commonwealth, 3 Barr 282; 1 Watts 227; 1 W. & S. 9; 6 Barr 201; 9 Id. 321; 5 Wright 1; 6 Id. 503; 7 Id. 244; 12 Id. 20; *Am. Prim. Soc. v. Pilling*, 4 N. J. 653; *Robertson v. Bullons*, 1 Kernan 243; *Keyser v. Stansifer*, 6 Ohio 363; *People v. Steele*, 2 Barb. 397; *Baker v. Fales*, 16 Mass. 506; *Stebbins v. Jennings*, 10 Pick. 172; *McGinnis v. Watson*, 41 Penn. St. 9; *Sutter v. Ref. D. Ch.*, 42 Id. 503; *Winebrener v. Colder*, 43 Id. 244; *Trustees v. St. Michael's Ch.*, 48 Id. 20; *Hosea v. Jacobs*, 98 Mass. 65; *Lawyer v. Clipperly*, 7 Paige 281; *Att'y.-General v. Pearson*, 3 Meriv. 264.

Titles held for a church in its associated connection, cannot be diverted, even by a majority: *Church v. Wood*, Wright 12; s. c. 5 Ohio 283; *Hullman v. Honcomp*, 5 Ohio St. 237; *Price v. Church*, 4 Ohio 515; *Wiswell v. First Cong. Ch.*, 14 Ohio St. 31; 7 Halst. 214; 2 Sandf. Ch. 214; 16 Mass. 504.

The mere fact that a title is held by or for a named religious society, though of the associated class, does not deprive a majority who change their faith, from a right to its use and control. The specified use must be declared: *Hullman v. Honcomp*, 5 Ohio St. 238; *Petty v. Tooker*, 21 N. Y. 273; *Att'y.-General v. Proprietors*, 3 Gray 1; *Robertson v. Bullions*, 9 Barb. 64; 1 Kern. 243; *Bellport v. Tooker*, 29 Barb. 257; *Wiswell v. Green*, Superior Court, Cincinnati, 1860; *McBride v. Porter*, 17 Iowa 203. In this case the deed was to the "trustees of the Associated Congregation of P. as subordinate to the Associate Presbytery of Iowa, subordinate to the Associate Synod of North America in trust for said congregation." It was held the congregation was entitled to the property as long as it remained subordinate as expressed in the deed, although it changed its name and faith: *Miller v. Gable*, 2 Denio 492; *People v. Steele*, 2 Barb. 397; *Ferrarea v. Vasconcelles*, 23 Ills. 456, s. c. 27 Ills. 238, s. c. 31 Ills. 26; *Gartin v. Penick*, 9 Am. Law Reg. 212, N. S.; Ky. Ct. App. 1870; Buck Mass. Ecc. L. 127; *Lang v. Purvis*, 5 Times Rep. 809; *Att'y.-General v. Gould*, 3 Id. 495; *Smith v. Nelson*, 18 Verm. 547. But see *Watson v. Jones*, 13 Wallace; American Law Register, July 1872, p. 430; American Law Record 154.

In a learned and valuable note, by Judge REDFIELD, to this case in the Law Register, there is cited *Att'y.-General v. Bunce*, Law Rep. 6 Eq. 563, in which the donor was a Presbyterian, and made a bequest to trustees for the use of a Presbyterian congregation, but in time it became mainly Baptist. The court held this continuous organization would hold the property. Vice-Chancellor MALINS said, "In progress of time many of the original Presbyterian congregations gradually changed their views, some becoming Independents, others Baptists, and not a few Unitarians."

In view of judicial rulings in Massachusetts, Buck affirms, perhaps a little too severely, that "it is questionable whether anything would save a meeting-house, especially in Boston, from any use to which the *bonâ fide* proprietor of pews might choose to put it:" 126, and he says, "Any religious society may become congregational in New York by observing" a plan he points out: 128 n.

In *Kniskern v. Lutheran Ch.*, 1 Sandf. Ch. 439, land was donated in trust for a "Lutheran" Congregation without other indication of the doctrines intended to be supported, and the trust was maintained for the Lutheran faith. There may be a difference between property donated and purchased, especially as to evidence of the purpose to which property is devoted. See preceding note. As to the distinction between a grant for value, and donation for a use, see *Gibson v. Armstrong*, 7 B. Mon. 481; 8 Ohio 552; Hill on Trustees 114.

A failure to observe these distinctions, and to clearly indicate them in the organization of churches, and in the title-papers of

Upon these subjects generally, see *McGinnis v. Watson*, 41 Penna. St. 9; *Trustees v. Stinger*, 9 Id. 321; *Dublin Case*, 38 N. H. 459; *Smith v. Nelson*, 18 Vt. 511; *Hendrickson v. Decow*, 1 Sax. Ch. R. 577; *Brown v. Porter*, 10 Mass. 93; *Ferraria v. Vasconelles*, 23 Ills. 456; s. c. 27 Ills. 238; s. c. 31 Ills. 26; *Harper v. Straws*, 14 B. Monroe 48; *Venable v. Coffman*, 2 W. Va. 310; *Harmon v. Dreher*, 1 Speer's Eq. 87; *Shannon v. Frost*, 3 B. Monroe 253; *Hadden v. Chorn*, 8 Id. 70; *Weckerley v. Geyer*, 11 S. & R. 35; *Sutter v. Trustees*, 6 Wright Penna.; 2 Am. Law Reg. N. S. 505; *McGinnis v. Watson*, 5 Wright Penna.; 2 Am. L. Reg. 251.

The Statute of Limitations may sanctify the perversion of a trust: *Buck* 126, 172. 190; *Cholmondeley v. Clinton*, 2 Jac. & W. 143; 2 Meriv. 361; *Phalen v. Clark*, 19 Conn. 421; *Kane v. Bloodgood*, 7 Johns. Ch. 123. See Stat. 3 & 4 Wm. 4, ch. 27; *Zeller v. Eckert*, 4 How. 295; *Decouche v. Savetur*, 3 Johns. Ch. 216; *Overstreet v. Bate*, 1 J. J. Marsh. 370; *Att'y.-General v. Proprietors*, 3 Gray 1, 64; *Proprietors v. Grant*, Id. 142; *Wells v. Heath*, 10 Id. 26; *Odell v. Odell*, 10 Allen; *Williams v. Presby. Soc.*, 1 Ohio St. 478; 2 Washb. Real Prop. 184; 1 Spence Eq. Jur. 502; *Lewin on Trusts*, 2d ed. 614; *Hill Trusts* 264; *Att'y.-General v. Hutton*, 1 Dru. 530; Stat. 7 & 8 Vict. c. 45, § 2, fixes twenty-five years.

And a *cy-pres* application of trust property may have the same effect: 3 Washb. Real Prop. 689; *Perry on Trusts*, § 376, 390, 717, 729.

And the purpose of a trust may be changed by consent of donor, trustee and *cestui que trust*: 1 Ohio St. 478; 2 Washb. Real Prop. 206; *Parker v. Converse*, 5 Gray 336; *Watson v. Jones*, 13 Wallace; *Cammeyer v. Lutheran Ch.*, 2 Sandf. Ch. 186; 9 Barb. 64; *Bowden v. McLeod*, 1 Edw. 588.

It has even been said that the consent of the donor is not necessary: *Perry Trusts*, § 671; 5 Gray 336; *Jones v. Salter*, 2 R. & M. 208; *Woodmeslar v. Walker*, Id. 197; *Brown v. Pocock*, Id. 210; 2 M. & K. 189; *Massey v. Parker*, 2 M. & K. 174.

The consent of a grantor on a *pecuniary* consideration would of course be unnecessary. Where a trust is created by a donor upon *consideration of the use*, it would seem harsh to permit the trustee and *cestui que trust* to pervert it to defeat the object of the grant: *Tiffany & Bullard Trusts* 63; *Hill Trusts* 114, 135; *Gibson v. Armstrong*, 7 B. Monroe 481; *Penfield v. Skinner*, 11 Verm. 296; *Kerlin v. Campbell*, 15 Penna. St. 500; 8 U. S. An. Dig. 64, 66, §§ 14, 21; 12 Id. 113, § 11; 2 Story Eq. 1177, 1178 n.; *Brown v. Jones*, 1 Atk. 188; *Redout v. Dowling*, Id. 419; *Perry Trusts*, §§ 158, 734; *Att'y.-General v. Munro*, 2 De G. & Sm. 163; *Field v. Field*, 9 Wend. 394; *Miller v. Gable*, 2 Denio 525; *People v. Steele*, 2 Barb. 397; *Craigdallie v. Aikman*, 1 Dow. 1; 2 Bligh 529; *Milligan v. Mitchell*, 3 My. & Cr. 72.

It is important to notice the effect of acts of incorporation, either by special charter or under general law.

The right to control property, elect and dismiss a pastor, and do many acts, may be affected by this. The general rule is that all rights are determined as the charter may prescribe, either by designated officers or by a majority of the congregation, whether the church be of the independent or associated class, and the church judicatories can determine nothing beyond the charter authority: *Baptist Church v. Withers*, 3 Paige 296; *Petty v. Tooker*, 21 N. Y. 267; 29 Barb. 256.

church property, has given rise to much controversy and litigation, and in the ever-changing march of intellect and ascertainment of new truths, it is likely to give rise to still more in the future.

Very many titles are held for church purposes with a confidence that they are secured for the propagation of particular doctrines, or for a specified religious denomination, or subject to the legislative control of ecclesiastical bodies, when in fact they may consistently with law be converted to the purposes of any system of religion, or be employed to aid the overthrow of all religion.

A particular religious society may be organized with an appropriate number of members as a new and original congregation, or it may originate from an existing society, as a swarm from a hive, either as a necessity by reason of numerous membership, or

See cases cited, note 53, *ante*; *Perry Trusts*, § 734; *Burrell v. Assoc. Ref. Ch.*, 44 Barb. 282; *Field v. Field*, 9 Wend. 394; *Ebaugh v. Hendel*, 5 Watts 53; *Gram v. Prussia*, 36 N. Y. (9 Tiff.) 161; s. c. 3 Trans. Appx. 161.

The Associated Churches generally do and Congregational Churches may avoid this result, and by proper terms sufficiently clear in the act of incorporation, or in the conveyance to the corporation, devote property to a particular faith, or subject it to the doctrines and control of an ecclesiastical body, supreme over associated societies; *Petty v. Tooker*, 21 N. Y. 273; *Watson v. Jones*, 13 Wallace; 1 Am. Law Record 165; *First Const. Pr. Ch. v. Cong. Soc.*, 23 Iowa 567; 17 Iowa 206.

But the power of a corporation to make *by-laws* is not a power to pervert a trust: *Eden v. Foster*, 2 P. Wms. 327; *Att'y-General v. Pearson*, 3 Mer. 411; *Perry Trusts*, § 734.

The question how far church property is held subject to a particular (1) *faith* and (2) *form of church government*, may be affected by (1) the articles of association, and by the constitution (where there are such) of a particular church, (2) by the deed of conveyance, or other evidence of title, and (3) by the act of incorporation, if any.

If members *secede* from a church corporation, though a majority, and still adhere to the doctrines of the church, those who remain will control it, unless a division is made by agreement: *M. E. Church v. Wood*, 5 Ohio 283; *Wiswell v. First Cong. Soc.*, 14 Ohio St. 31; *Dartmouth College v. Woodward*, 4 Wheat. 518; *Brown v. Porter*, 10 Mass. 93; *Baker v. Fales*, 16 Mass. 488; *North Hempstead v. Hempstead*, 2 Wend. 135; *Harrison v. Bridgton*, 16 Mass. 16; *Hampshire v. Franklin*, Id. 76; *Presby. Ch. v. Dannon*, 1 Desaus. Ch. 154; *Smith v. Smith*, 3 Id. 557; *Harmon v. Dreher*, 1 Speer's Eq. 87; *Associate Ref. Ch. v. Theo. Sem. Princeton*, 3 Green, N. J., Ch. 77; *Gable v. Miller*, 10 Paige 627; *Cammeyer v. United Germ. Luth. Ch.*, 2 Sandf. Ch. 186; *Smith v. Swormstedt*, 16 How. 288; *Burrell v. Associate Ch.*, 44 Barb. 282; *Stebbins v. Jennings*, 10 Pick. 172; *Buck Eccl. L.* 60; *Sawyer v. Baldwin*, 11 Pick. 492; *Page v. Crosby*, 24 Id. 211; *Parker v. May*, 5 Cush. 336; *Lowell v. Bancroft*, 4 Id. 281; *Den v. Bolton*, 7 Hal. 206; *State v. Crowell*, 4 Id. 390.

by voluntary or other division, in consequence of disagreement not relating to established doctrines, or by schism or secession in consequence of a change of faith. So, two or more congregations may sometimes unite into one society from various considerations.

In all such cases there are in many of the different denominations proceedings or forms to be observed, in obedience to regulations prescribed or resulting from usage. It is not designed to consider these ecclesiastical forms and regulations.⁵⁶

⁵⁶ *Prescribed Rules for Organizing a United Presbyterian Congregation.*—"When a congregation becomes too numerous to meet conveniently in one place for public worship, or when for any other reason it would promote the general interests of the church to organize a new congregation, the persons so judging shall make application to the Presbytery, within whose bounds they reside, setting forth the necessity or propriety of such organization. Whenever application for this purpose is made, notice shall be given by the Presbytery to the session of the congregation, that may be affected by the new organization, before the petition is granted."

"If after hearing the reasons, the Presbytery determines to grant the application, it shall appoint a minister and two ruling elders, if practicable, to carry the object into effect; and they having given due notice to the persons who are to compose the new congregation of the time and place of meeting for said purpose, shall, after the usual exercises of public worship, proceed to hold an election for the proper officers."

"When the persons who are to compose the new congregation are already members of the church in full communion, the election of officers shall be conducted as in congregations already organized."

"But when the applicants are not in communion, the minister shall converse with all who propose to unite in forming the congregation; and being satisfied with their religious attainments and character, he shall, on the day appointed for the organization, publicly receive them by proposing the questions usually proposed to applicants for membership. The election shall then be conducted in the prescribed way."

"When the election is over, the minister shall announce to the congregation the names of the persons elected; and on their agreeing to accept the office, and having been examined by him as to their qualifications for, and their views in undertaking it, a day shall be appointed for their ordination, the edict served, and the ordination conducted as in other congregations."

"The presiding minister shall report to the Presbytery his procedure in the case, with the names of the officers who have been chosen and ordained. And these with the name of the congregation shall be entered on the Presbytery's list."
—*FORM OF GOVERNMENT AND GENERAL ADMINISTRATION*, pages 15 and 16.

Process of Organizing a Presbyterian Church.—1. There must be some persons in a given locality desiring to be organized into a church.

2. In all ordinary cases such persons will reside within the territorial limits of some Presbytery.

3. Such persons sign a petition to the territorial Presbytery, praying them to

But at the point where these end, those questions of law arise which may properly be considered to place these organizations,

organize a Presbyterian church in the given locality, which petition may also be signed by persons who do not propose to become members of the church at its organization, but only to be supporters of the organization.

4. If the Presbytery gives the petition a favorable answer, it appoints a committee to meet at a certain time and place to consider the matter, and, if the way be clear, to effect the organization.

5. The committee meets, and if it finds the way clear, it organizes the church by examining the persons proposing to be members of the same, or receiving their certificates of membership from other churches, if they present such, by presiding during the election of elders and deacons, and by ordaining or installing said officers, as the case may require.

N. B. Trustees are civil officers of the congregation, not officers of the church, and the Presbytery or its committee has nothing to do with them.

6. In missionary portions of the church a minister holding the position of missionary or evangelist, under the appointment of Presbytery or General Assembly, has authority to organize churches where he finds materials to organize, reporting his action in every case to the Presbytery in whose bounds the organization is, if there be one, and to the General Assembly if he be its appointee.

REMARK.—By common consent, in the Presbyterian Church, a distinction is made between the local church and the congregation. The church consists of the membership of the Spiritual body. The congregation consists of all those members and adherents who ordinarily worship together, and join in the support of religious services.

This process of organizing a new congregation is adopted by *usage*, not by any prescribed law of the church. A church is defined in chapter 2, article 4, of the Form of Church Government, p. 406, Conf. of Faith.

Mode of Organizing a New Society of the Methodist Episcopal Church as determined by Usage.—If in a certain neighborhood there are persons desiring to organize themselves into a Christian Society in accordance with the rules and usages of the M. E. Church, how is such organization effected?

They apply to a Methodist preacher, having regular pastoral charge near them, who receives them as members of the church, either by written certificate of their good standing in some other society, or on profession of their faith. The preacher then enrolls their names in the general register of his charge, and in a class-book which he gives to one of them whom he appoints as leader of the class. The leader represents them in the Quarterly Conference.

When these steps have been taken, the society is duly constituted, and becomes an organic part of the church, and has regular pastoral care. And this care is perpetuated from year to year by the appointment of a pastor by the bishop at the session of the Annual Conference in whose bounds such society is situated.

If this society have a house of worship, or propose to erect one, a board of trustees must be created in accordance with the laws of the state or territory to hold the property in trust for said society. These trustees must be approved by the Quarterly Conference of the Circuit of which such society is a part. And to be admitted, the charter, deed or conveyance of such house of worship, must contain the trust required by the discipline of the church.

In the Protestant Episcopal Church it has been the usage for the Annual Con-

divisions and unions in possession of the rights, immunities and privileges which legal sanctions give.

The legal provisions and principles applicable to these, the forms by which they are perfected, the measure and mode of redress, remain to be considered hereafter.

WM. LAWRENCE.

BELLEFONTAINE, O.

RECENT AMERICAN DECISIONS.

Supreme Court of Wisconsin.

CONKEY v. MILWAUKEE AND ST. PAUL RAILROAD CO.

A railway company is liable as a common carrier, and is an insurer of the goods, not only while the goods are in actual transit over its line of railway, but until an actual delivery of the goods to the next succeeding carrier.

If the succeeding carrier should refuse to accept delivery of the goods, or in case of a break or interruption in the line of transit, as by storm, flood or earthquake, or by fact of war, rendering it impossible to send the goods forward, or causing considerable delay in the transportation, the carrier might relieve itself of its strict liability as a common carrier by storing the goods and notifying the owner or consignor thereof.

The case of *Wood v. Railway Company*, 27 Wis. 541, overruled.

THE defendant operating a line of railroad between Milwaukee

vention of each diocese to prescribe a form of organizing a particular parish. As an example, the form adopted by the Diocese of Missouri will be found in the journal of the 31st Annual Convention of the P. E. Church in the diocese: May 1871, p. 122, Appx. No. 12.

For form in Maryland, see "Compilation," referred to in note 38, *ante*.

Both the Associate and Congregational Churches may have articles of association, and a constitution of the church; and these may be adopted both in the *canonical* and the *legal* organization of a particular church. The form of canonical and legal organization of a parish in the Diocese of Missouri is given in the journal of the Annual Convention above referred to, and in the journal of the Convention of 1871, p. 127, Appx. No. 18, is given the constitution of the church in the diocese regarding it as a diocesan body.

In the [late German] Reformed Church in the United States, the usage is for each congregation to adopt a constitution and by-laws. A form is given in the proceedings of the Synod of Ohio for 1850, p. 71.

The General Synod of 1866 recommended that the constitution should be "embraced in the charters of all the churches:" Proceedings, p. 19. And see Proceedings of Synod of 1869, p. 86, for form of incorporation.

There is a general constitution for the entire church, subject to the legislative power of the General Synod.